

MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

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JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Mr. John Brown

Ms. Teri Rie

Ms. Emma Suarez

STAFF

Mr. Jay Punia, Executive Officer

Ms. Virginia Cahill, Legal Counsel

Mr. Dan Fua, Supervising Engineer

Mr. Gary Hester, Chief Engineer

Ms. Lorraine Pendlebury, Staff Analyst

DEPARTMENT OF WATER RESOURCES

Mr. Steve Bradley, Chief, Statewide Flood Planning Office

Mr. Mark Cowin, Deputy Director, Regional Water Planning & Management

Ms. Nancy Finch, Legal Counsel

Ms. Myra Galvez, Staff Services Manager I

Mr. Ricardo Pineda, Chief, Floodplain Management Branch

Mr. George Qualley, Chief, Division of Flood Management

Mr. Keith Swanson, Chief, Flood Maintenance Office

Mr. John Yego, Chief, Floodway Protection Section

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Dick Akin, Akin Ranch

Mr. Fran Borcalli, FloodSAFE, Yolo County

Mr. Paul Brunner, Three Rivers Levee Improvement Authority

Mr. Stein Buer, Sacramento Area Flood Control Association

Mr. Stanley Cleveland, Sutter County Board of Supervisors

Mr. Mark Connelly, San Joaquin County Public Works

Mr. Paul Devereux, RD1000

Mr. Tom Eres, Hofman Ranch

Mr. Ron Erickson, Sutter County

Mr. Jim Giottonini, City of Stockton

Ms. Janelle Gray, Sacramento City Treasurer's Office

Mr. Gregg Herrington, Unger Riverfront Property

Mr. Paul Hight, County of Sacramento

Mr. Brian Holloway, American River Flood Control District

Mr. Ken Ruzich, RD900

Mr. Scott Shapiro, Three Rivers Levee Improvement
Authority, Central Valley Flood Control Association

Ms. Debbie Smith, Deputy Attorney General, California
Attorney General's Office

Mr. Tim Washburn, Sacramento Area Flood Control
Association

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. If I could ask you to take your seats, we'll
4 go ahead and bring the meeting to order.

5 This is the Central Valley Flood Protection
6 Board, our monthly meeting -- public meeting.

7 Mr. Punia, would you please call the roll.

8 EXECUTIVE OFFICER PUNIA: Jay Punia, Executive
9 Officer, Central Valley Flood Protection Board.

10 Except Board Member Teri Rie, the rest of the
11 Board members are here.

12 PRESIDENT CARTER: Thank you.

13 We'll go on with Item 2, Approval of the Minutes
14 for September 19th.

15 I didn't see any minutes in the package for
16 September 18th. Were there any?

17 EXECUTIVE OFFICER PUNIA: We failed to include
18 the tour minutes. I think we will be bringing back the
19 tour minutes. Those were not included in this package.

20 PRESIDENT CARTER: Okay. So we'll entertain a
21 motion to approve the minutes of September 19.

22 I believe, Lady Bug, you sent out some
23 corrections this week?

24 SECRETARY DOHERTY: Yes, I did.

25 PRESIDENT CARTER: I don't know if everybody got

1 those corrections.

2 Any additional corrections?

3 What's the Board's pleasure?

4 BOARD MEMBER SUAREZ: Move to adopt the minutes.

5 PRESIDENT CARTER: Okay. We have a motion.

6 And a second?

7 SECRETARY DOHERTY: Yes, I will second it.

8 PRESIDENT CARTER: Motion and a second.

9 Any discussion?

10 All those in favor indicate by saying aye.

11 (Ayes.)

12 PRESIDENT CARTER: And opposed?

13 Motion carries unanimously.

14 All right. Moving on, we have the agenda for
15 today. Are there any proposed changes to the agenda for
16 today's meeting, Mr. Punia?

17 EXECUTIVE OFFICER PUNIA: Item No. 13, Board
18 Sponsored Project and Study Agreements - West Sacramento
19 Project.

20 At the request of the applicant and the
21 Department of Water Resources, we are requesting the Board
22 to postpone this item for the December meeting.

23 SECRETARY DOHERTY: Item 12?

24 EXECUTIVE OFFICER PUNIA: Item 13, West
25 Sacramento Project.

1 SECRETARY DOHERTY: That's 12 on mine. West
2 Sacramento Project?

3 PRESIDENT CARTER: You have the right version?
4 You have the --

5 SECRETARY DOHERTY: Oh, no. That's December.
6 I'm sorry.

7 PRESIDENT CARTER: Let the record reflect it is
8 Item 13 for the West Sacramento Project.

9 EXECUTIVE OFFICER PUNIA: Yeah.

10 PRESIDENT CARTER: Any other suggested changes?

11 BOARD MEMBER SUAREZ: I have a question.

12 SECRETARY DOHERTY: I'll make a motion that we
13 approve the agenda as amended.

14 BOARD MEMBER BROWN: Second.

15 PRESIDENT CARTER: We have a motion and a second.

16 Emma, did you have a question?

17 BOARD MEMBER SUAREZ: Just a clarification on
18 Item 12, on the Sutter Bypass resolution.

19 I can't remember. Do we or don't we have a copy
20 of that? The staff that was sent in the package was --

21 PRESIDENT CARTER: My recollection was that the
22 Board package went out with an incorrect resolution under
23 that item and then staff sent out electronically the
24 correct resolution for Item 12 that went out end of last
25 week or so, I think.

1 BOARD MEMBER SUAREZ: And that was posted on line
2 for the public to see?

3 EXECUTIVE OFFICER PUNIA: Lorraine can address
4 that.

5 Lorraine, could you come to the podium and
6 address that.

7 STAFF ANALYST PENDLEBURY: Lorraine Pendlebury.
8 I'm not sure that it was posted on line.

9 EXECUTIVE OFFICER PUNIA: It is posted but the
10 -- the resolution that was posted on line was the correct
11 resolution.

12 STAFF ANALYST PENDLEBURY: The correct one,
13 that's right.

14 EXECUTIVE OFFICER PUNIA: So it was only -- the
15 packets which were mailed in the -- we by mistake gave you
16 the wrong resolution and then we sent you a corrected one.
17 So on the web it was always the correct resolution.

18 STAFF ANALYST PENDLEBURY: Emma, you also have a
19 copy in your Board folder. And I'll find it for you.
20 Hang on.

21 BOARD MEMBER SUAREZ: Thank you.

22 PRESIDENT CARTER: So any other questions,
23 discussion on the agenda?

24 We have a motion and a second to approve as
25 amended. And the amendment is to postpone Item 13 to a

1 subsequent meeting.

2 Okay. All those in favor of approving the agenda
3 as amended indicate by saying aye.

4 (Ayes.)

5 PRESIDENT CARTER: And opposed?

6 Motion carries unanimously.

7 Thank you.

8 At this time, ladies and gentlemen, we have
9 allocated time for public comment. This is the time when
10 the Board invites any member of the public to come up and
11 address the Board on items of their concern that are not
12 agendized for today.

13 We do ask that you please -- if you wish to
14 address the Board either on agendized items or during this
15 public comment, if you would please fill out these little
16 3 by 5 cards, a stack of which are on the table at the
17 entrance to the auditorium or available here in the front,
18 just so that we know to recognize you as part of public
19 comment.

20 I do have two cards at this time. So we'll start
21 in the order received.

22 Mr. Swanson.

23 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Good
24 morning. Keith Swanson, Chief of the Flood Maintenance
25 Office.

1 Just a quick comment on fences and gates. You
2 guys have dealt with that in the past. I don't want to
3 get into any specific requests in front of you, but I do
4 just want to implore you to really think about these as
5 they come forward to you in the future and really limit
6 them based on the need to control vehicular traffic.

7 When they cross the levees, they're expensive to
8 construct, they're expensive to maintain. Sometimes
9 that's deferred to locals, but invariably the maintainers
10 get involved with the maintenance of them.

11 They're expensive to work around. You end up
12 having to go do hand work as opposed to mechanized
13 maintenance. And probably the biggest thing, they're
14 expensive to get through. Every time you have to stop and
15 open up the gate and pass your truck through and then
16 close the gate. And especially when you have gates every
17 couple thousand feet, which we do in some instances on our
18 levees.

19 I would implore you to talk with other the
20 maintainers and existing staff to get a better feel for
21 the impact of what they -- you know, what they represent.
22 And I'd also invite you to go out, just on a general
23 sense, and drive down some of our levees with a lot of
24 fences and gates on them. We spoil you a little bit,
25 because when we take you out, we generally have people

1 going in front opening the gates and shutting the gates
2 behind, so you don't get a sense of what it takes to get
3 through them.

4 You know, there's always issues with rusty locks,
5 yellow jackets, cut locks, things like that, and just the
6 opening and closing of the gates.

7 We really push hard to get our staff working and
8 conducting maintenance in the most efficient manner.
9 Having to deal with the fences and gates does impact that.
10 And so, you know, they don't typically contribute to
11 public safety when they're, you know, every couple
12 thousand feet.

13 So thank you.

14 PRESIDENT CARTER: Thank you.

15 Mr. Herrington.

16 MR. HERRINGTON: Good morning, President Carter
17 and members of the Board. My name is Gregg Herrington and
18 I represent the Unger Riverfront Property. I'm their
19 project manager. Our property's in West Sacramento
20 between the Tower Bridge and the Pioneer Highway 50
21 Bridge. You may remember this area from a site visit
22 approximately two years ago and an application filed by
23 the City of West Sacramento for a riverwalk promenade.
24 I'll note that the key element of this area was the
25 existing high ground, and that we have been seeking a

1 building setback in an area without a defined levee for
2 quite some time.

3 I'm here this morning for two reasons. The
4 first, to commend staff in their collaborative efforts
5 with DWR, the Army Corps of Engineers and the West
6 Sacramento City staff. In my opinion, that the group
7 collectively has come farther in defining a levee in the
8 past year than we have in the previous five years.

9 And second, I'd like to stress the urgency that
10 the owners in the city need to bring this issue before the
11 Board. We've spent a lot of time working with staff and I
12 think with a very good product to bring to the Board.

13 But the reason for this urgency is we've recently
14 received \$23 million from the Prop 1(c) infrastructure
15 funding -- the State of California Prop 1(c). And in
16 order to get this -- receive this money, the owners need
17 to step forward, put a financing plan in place for \$75
18 million of additional infrastructure. And it's very
19 difficult for my group, as a riverfront owner, to put
20 additional debt on their property when they're not exactly
21 sure how big their property is due to the setback.

22 I think we have a very conservative approach that
23 we're excited to bring to the Board, and I look forward to
24 doing that in the near future.

25 Thank you.

1 SECRETARY DOHERTY: Mr. Herrington, excuse me.

2 MR. HERRINGTON: Yes.

3 Who do you represent?

4 MR. HERRINGTON: The Unger family.

5 SECRETARY DOHERTY: Oh, okay. I didn't hear
6 that.

7 MR. HERRINGTON: Oh, no problem.

8 SECRETARY DOHERTY: Thank you.

9 MR. HERRINGTON: Thank you.

10 PRESIDENT CARTER: Thank you very much.

11 VICE-PRESIDENT HODGKINS: Question?

12 PRESIDENT CARTER: Of course.

13 VICE-PRESIDENT HODGKINS: Is there a member of
14 the Board staff involved in the discussion?

15 MR. HERRINGTON: Yes, we're working with -- Eric
16 Butler is kind of our lead person that we've been
17 coordinating with.

18 VICE-PRESIDENT HODGKINS: All right. Very good.
19 Thank you.

20 MR. HERRINGTON: Thank you.

21 PRESIDENT CARTER: Thank you, Mr. Herrington.

22 Is there anyone else -- any other member of the
23 public that wishes to address the Board on non-agendized
24 items?

25 Mr. Eres.

1 MR. ERES: Good morning, Mr. President, members
2 of the Board. I hadn't planned to speak at this time.
3 But in light of Mr. Swanson's comment about fences on
4 levees, you know, that's very sensitive.

5 PRESIDENT CARTER: Mr. Eres, would you please
6 introduce yourself for the record.

7 MR. ERES: Tom Eres representing Hofman Ranch.
8 We now have to use the term "Olivehurst" rather than
9 "Marysville" with the postal service.

10 But the bottom line is that when you're looking
11 at your policy on fences, make sure you look at it
12 customized between those that may be in more urban areas
13 and rural area. Fences are extremely important farming
14 and ranching in rural areas.

15 Thank you.

16 PRESIDENT CARTER: Thank you.

17 Is there anyone else that wishes to address the
18 Board on unagendized items?

19 Very well.

20 At this point, we have Report of the Activities
21 of the Department of Water Resources. And I believe we
22 have a distinguished guest with us this morning that would
23 like to address the Board.

24 Distinguished. Thank you very much, President
25 Carter.

1 PRESIDENT CARTER: I'm sorry, George. You're
2 also very distinguished.

3 (Laughter.)

4 DWR DEPUTY DIRECTOR COWIN: I just assumed you
5 were talking about me.

6 (Laughter.)

7 DWR DEPUTY DIRECTOR COWIN: Thank you very much.
8 I'm Mark Cowin, Deputy Director of the Department of Water
9 Resources. I had the opportunity to meet several of you
10 prior to the meeting this morning.

11 I'm a Department veteran, been around for longer
12 than I care to say, I guess. But just to give you a sense
13 of my history, worked with your Executive Officer a few
14 years ago on surface storage planning. That was the
15 reason that I left the comforts of my Fresno/San Joaquin
16 District Office to move to Sacramento. Worked in the
17 CALFED program for a few years with Ginny Cahill and
18 others and enjoyed that experience.

19 About the past five years or so -- no, I guess
20 it's been more like six or seven years ago I've served as
21 Division Chief and Deputy Director over our Department's
22 Division of Planning and Local Assistance and other
23 activities focused on regional water management. We
24 produced the California Water Plan, administered Prop 84
25 programs, and championed the Integrated Regional Water

1 Management Program that I think has been a big success for
2 improving water supply reliability in California.

3 Recently, I guess it's been a matter of a few
4 weeks ago now, Director Snow has asked me to expand my
5 portfolio and start to oversee the activities of the
6 Division of Flood Management and the FloodSAFE Program as
7 well. So as I take on those responsibilities, the
8 Director's asked me to of course continue the important
9 work that is ongoing, developing and implementing the
10 routine programs of the Division and also to begin to
11 think about how we can integrate water management
12 activities together so that we can leverage the programs
13 that I have been working on and work towards multiple
14 objectives in reducing flood risk, improving water supply
15 reliability and working for opportunities to improve
16 ecosystem restoration and environmental stewardship.

17 I look forward to working with all of you in that
18 regard and getting to know you all better. So thank you
19 for this opportunity to introduce myself.

20 PRESIDENT CARTER: Thank you very much, Mr.
21 Cowin, for coming to say hello to the Board. Welcome
22 aboard. We look forward to working with you as well.

23 Well, continuing in our line of distinguished
24 individuals.

25 (Laughter.)

1 PRESIDENT CARTER: Mr. Qualley, would you like to
2 give the report of the activities of the Department of
3 Water Resources.

4 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY: I'd
5 be happy to do that, President Carter, members of the
6 Board.

7 To start off with water conditions. And we
8 haven't really changed much since last month. But, you
9 know, we've had two consecutive critically dry years and
10 the reservoirs are -- you know, the multipurpose
11 reservoirs are now the lowest in 14 years. So that takes
12 it back to -- yeah, to '94. And, you know, we know how
13 wet things were in the first half of the 1990s. But it
14 would be worth thinking about 1995, the following year we
15 had really a triple January, triple March. And it
16 would -- you know, so it is possible to pull out of these
17 kind of things in a hurry. So there is hope, you know, on
18 the water supply. And we always have to be vigilant on
19 the flood side even if we are going into a dry year
20 situation.

21 We did have a good October and continuing into
22 November, which of course isn't, you know, very
23 statistically significant as far as water supply. But
24 it's better than if it was bone dry. So it, you know, has
25 helped in that respect.

1 And the National Weather Service long-range
2 weather outlook did indicate above average precip for
3 northern California in November. So hopefully we can
4 continue with a good start to the season and keep building
5 on it as we go through the season to keep adding to that
6 snowpack.

7 We have an extensive report on Flood Operations
8 Branch this month. We like to highlight different parts
9 of the Division at different times of the year, and this
10 certainly is an appropriate time of year to highlight our
11 Flood Op's activities. So we've got about six pages of
12 material in the report to give you a real thorough update
13 on the activities. I'll just touch on a few of the
14 activities as I go through.

15 This is the time of year where we're doing visits
16 to, you know, various of the entities that we coordinate
17 with, you know, ten county OES offices that have forecast
18 points on the river. It's because we want everybody to
19 make sure that, yeah, the local people understand how our
20 forecast of procedures work and just how the -- you know,
21 how the communications links are established. Because you
22 get people -- you know, new people in new positions over
23 time, and we want to make sure everybody is up to date.

24 So we, you know, conduct several rounds of those
25 type of meetings with different organizations, including,

1 you know, maintaining agencies and other agencies that we
2 interact with.

3 We've completed most of the preseason meetings.
4 There is an additional one coming up on the North Coast
5 area December 4th up in Eureka, where we have our Eureka
6 Flood Center.

7 PRESIDENT CARTER: So is the intent of that
8 meeting to cover basically northern California?

9 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY: The
10 North Coast area is -- you know, we're co-located with the
11 weather service up in Eureka. So they meet with --
12 primarily with county representatives up there. And of
13 course the weather service participates in those meetings
14 too.

15 PRESIDENT CARTER: Do you anticipate holding
16 other meetings in northern California? Because I notice
17 you did seven pre-season meetings in southern and central.

18 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY: I
19 think they might have already done the northern California
20 ones. I don't have that schedule right off my fingertips.
21 But I know we do cover all of the areas. And I should be
22 able to tell you whether they've had them. But my
23 recollection is that we hit the northern California areas
24 first. But I'll double check and, you know, give you the
25 exact dates those meetings were held.

1 PRESIDENT CARTER: Thank you.

2 BOARD MEMBER SUAREZ: Maybe we need to define
3 what northern California is for them.

4 PRESIDENT CARTER: I hope we don't.

5 (Laughter.)

6 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

7 Basically the Sacramento system.

8 Emergency action plans where the Flood Operations
9 Center staff were -- another thing we participate in. The
10 local entities do these tabletop exercises or functional
11 exercises from time to time. So we do participate in
12 those to make sure that we're, you know, responding
13 correctly when, you know, some emergency would come up
14 with one of our sister agencies.

15 And Upper Jones Tract. We're continuing to
16 monitor that very closely and working with RD 2039. It
17 kind of shows the chronology of events this season,
18 leading up to RD 2039 did declare a state of emergency,
19 which would trigger the possibility of using some of the
20 funds under the Delta special projects. So our Delta
21 Suisun Marsh office and our Division of Engineering is
22 currently working with RD 2039 and with an engineering
23 company that they've engaged under AB 360 as a potential
24 expedited special project.

25 And then parallel with that, our Flood Operations

1 Center is developing a contingency plan for the closure
2 site, because it'll take some time for the -- you know,
3 for the engineering and they have to determine exactly
4 what should be done to, you know, more permanently
5 stabilize the closure site. And we'll be having that
6 contingency plan done very soon.

7 SECRETARY DOHERTY: Mr. Qualley, are you just
8 simply going to monitor it while you're studying all these
9 contingency plans?

10 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

11 Well, you know, there needs to be, you know,
12 additional work done there, that's pretty clear, because
13 the seepage through the material that was put in place,
14 it's a lot of water coming through. There has been
15 extensive inspection of the site to, you know, determine
16 whether there is an imminent threat. And it's been
17 determined that there is not an imminent threat at this
18 time. But obviously it's something they want to monitor
19 very closely. So the engineering work is going on to
20 figure out what is the best, you know, solution at the
21 site.

22 SECRETARY DOHERTY: Is this where it broke
23 before?

24 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

25 That's correct.

1 SECRETARY DOHERTY: Thank you.

2 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

3 Continuing on, we've been reporting from time to
4 time on -- we were called into Inyo County back in the
5 summertime when they had a severe thunderstorm dropped a
6 lot of rain on the local watershed and mud and debris
7 flows hit, and we've been coordinating with the local
8 agencies and OES periodically over these last several
9 months. And there are some grants that Inyo County
10 appears to qualify for from the Department of Forestry to
11 do remedial work on the burn areas.

12 In the area of local emergency preparedness and
13 response, we're working on a new kind of services
14 agreement with the Corps that will give us access to our
15 Corps mapping of certain Delta-specific areas. And this
16 is, you know, part of our overall efforts. We want to be
17 the -- you know, kind of the place where all of this type
18 of information can be held so that when we do get into
19 high water situations, we've got, you know, all types of
20 mapping, GIS, and various types of data available at our
21 fingertips not only for our use but to share with others.
22 So this will help bring in more of that kind of
23 information to be more readily available.

24 Working on three types of emergency action plans
25 for the Delta, the titles sound very similar. The one

1 that's at the bottom of page 5, the Emergency Action Plan
2 for the Delta, and that's one that is to develop -- what
3 the appropriate response is to a major, you know,
4 catastrophic failure in the Delta. It indicates here up
5 to 20 islands. And there's been -- there was in 19 -- in
6 2007, there was a draft plan that was put together, and
7 there's been a couple updates prepared after that. And we
8 have, you know, staged a lot of material out in the Delta
9 for -- you know, for potential use.

10 And there's a more detailed plan in process
11 currently underway to, you know, more thoroughly look at
12 the different permutations of these different failure
13 scenarios and come up with a more detailed plan on how we
14 can utilize additional bond funds to pre-deploy additional
15 material and equipment, and also to strategize on, you
16 know, different types of response to different
17 combinations of failure. So that work is going on.

18 And also there's Delta Flood Preparedness and
19 Response Plan. That's tied in with SB 27 to, you know,
20 develop an overall or response plan for the Delta. And
21 this focuses on, you know, activities that the Department
22 would be doing. Then in conjunction with that -- and this
23 also is part of SB 27. Actually the second one is more
24 probably the focus of SB 27, where they want a plan that
25 shows how all the different agencies will coordinate

1 together on a Delta response. So that takes, you know,
2 the Department's Emergency Response Plan. The Corps also
3 has such a plan, and in different local agencies. And so
4 that brings it all together so it's, you know, very clear
5 what each agency's responsibility is and how they would be
6 dealing with -- you know, with a Delta emergency. So all
7 three of those planning efforts are underway.

8 Flood system analysis. Well, we're trying to
9 improve our tools to, you know, develop, you know,
10 consistent ratings of the different levees. And so on
11 this vulnerability assessment it describes -- right now
12 it's kind of in a spreadsheet form, and we're looking to
13 make it into a relational database where there's -- we can
14 pull these various types of information off the inspection
15 reports and it will help us, like I say, do a more
16 objective rating of the floodway conditions and pinpoint
17 areas where -- you know, are at higher risk or certainly
18 of greater need for work. So that's a process that's
19 underway.

20 Also working with the local counties on
21 inundation maps. All of the dams are required to have
22 inundation maps. So they're working with them to, you
23 know, actually obtain copies of all those maps. Again,
24 part of that process of getting information, you know,
25 stored right in the flood center to have available and

1 also are creating a top 10 list of dams that have the
2 biggest impact to life and property based on population
3 center.

4 State Emergency Assessment Team, the SEAT
5 Reports. That's the activity related to the fires. And
6 there have been seven of these reports that were put
7 together for the 2008 wild fires, because, as you recall,
8 last summer there were fires, you know, burning in many,
9 many parts of the state. So that's an additional activity
10 that Flood Management staff, you know, cooperated with
11 with OES and other agencies to, you know, provide staff
12 support for these activities.

13 Emergency Response and Security Section. We've
14 been updating our communication plan for emergency
15 response in order to clarify current process in identify
16 needs for additional communication to engage in the
17 response activities. We, you know, want to make sure that
18 our communications are clear both, you know, within our
19 own organization and within DWR and with all the other
20 organizations we're dealing with. And as you all know,
21 communication is something that you're probably never
22 going to get perfect. You keep having to work at it. And
23 if there are glitches that appear, then you, you know,
24 work to try to avoid those difficulties in the future. So
25 this effort is in that vein.

1 There's going to be a tabletop exercise on
2 December 10th to test the new Delta Emergency Operations
3 Plan. And there'll be a large group of participants in
4 that activity, I'm sure.

5 And we're also looking at additional sites for --
6 or additional sites facilities and stockpile materials
7 with -- that can be used with the funds that were made
8 available through SB2X1. That provided a total of 135
9 million, of which a portion of that would be for -- you
10 know, for this purpose.

11 We also participated in the recent Golden
12 Guardian exercise. That was pretty much focused in
13 southern California related to earthquakes, but we would
14 have statewide responsibilities. So DWR brought -- you
15 know, functioned both in their Department Operations
16 Center and the Flood Operations Center to participate in
17 that activity.

18 Statewide flood planning. Steve Bradley is going
19 to be chatting with you a little bit here after my
20 remarks. But they'll formally present the schedule of
21 implementation for preparation of the flood control system
22 status support at your December meeting.

23 And they've also been interviewing key partners
24 and stakeholders to gather information on how they want to
25 be involved in development of the Central Valley Flood

1 Protection Plan. I actually was interviewed by one of the
2 consultants on that the other day as I was driving down to
3 another meeting. And, you know, they asked some pretty
4 good questions about, you know, what your thinking is on,
5 well, you know, the goals of the Central Valley planning
6 process and a whole variety of activities. So I think
7 they're going to develop some good information by talking
8 to a wide group of people about what their expectations
9 are.

10 Flood Maintenance Office. Sutter Bypass. The
11 staff, as was promised at the last Board meeting, have
12 been meeting with Board staff on a variety of issues in
13 the Sutter Bypass, and also will be meeting with the Corps
14 on, you know, the various things that was talked about at
15 the October 17th meeting agreeing on the design capacity
16 that we'll be maintaining to and also beginning to
17 identify the owners of parcels in the bypass.

18 SECRETARY DOHERTY: Mr. Qualley, on your last
19 bullet there, the DWR Flood Maintenance Office will
20 finalize an update to the 1-D. We requested a 2-D.

21 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

22 Yeah, the work on the 1-D was almost done, so it
23 wouldn't have made much sense just to throw that away. So
24 that was a matter of bringing that process, you know, to
25 closure. And, you know, we understand from the discussion

1 at the last meeting that there is a lot of interest in
2 doing a 2-D model, and we know that's the subject of a
3 Board resolution today.

4 And of course we'll, you know, be, you know,
5 continuing conversations with the Corps and others. One
6 of the things that we'll need to do of course is identify
7 funding for that, because there hasn't been a good
8 estimate prepared yet. That would be kind of the first
9 step is to prepare an estimate just how much would it cost
10 to do a model of that type and then determine is there
11 funding in the budget or is that something that we would
12 have to put in a BCP for to get additional funding.

13 SECRETARY DOHERTY: Well, perhaps Fish and
14 Wildlife could help with that.

15 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

16 Yeah, those are all the kind of things that we'd
17 be looking at. But we would have to identify funding for
18 it. And it gets down to, as was discussed at the last
19 meeting, you know, different priority calls on where --
20 you know, what is the most significant unknown issues to
21 do these type of studies. Because there's, you know, a
22 number of parts to this system that we look at.

23 But certainly we are you going to be engaged in
24 all of these activities to, you know, develop an estimate
25 and just see where it takes us.

1 BOARD MEMBER SUAREZ: I have a quick question.

2 Will you be here for the discussion at Item 12?

3 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY: Yes.

4 Okay. Moving to Flood Project Modifications and
5 Permits Branch, our early implementation projects. We're
6 the only one that's still active, is the setback levee
7 project up in Yuba County. And they're I think planning
8 on keeping going as long as the weather permits them to do
9 that. So on the one side it's nice to see them working to
10 make progress on the work. On the other side from the
11 water supply standpoint, we really would like to see the
12 precip and building up the snowpack. So whatever will be
13 will be as far as how long they can keep working.

14 And we have been -- a combination of engineers,
15 obviously, you know, TRLIA's engineers, the Department has
16 their Division of Engineering in our levee evaluation of
17 geotechs, and we've all been -- had a number of joint
18 meetings about, you know, evaluating, you know, the crack
19 that appeared on segment 1 and what potential failure
20 mechanisms and risks there are in developed monitoring
21 mechanisms and in emergency plan, you know, in the event
22 certain conditions prevail. So I think we've got the
23 bases covered on that. But it's continuing to develop
24 data on that regarding the cracks. And have covered it
25 with plastic so it doesn't get additional moisture into

1 it. So that is being watched very closely. But we've
2 had, you know, the best minds both within and outside the
3 Department really taking a hard look at that to make sure
4 that, you know, we don't have, you know, an inordinate
5 risk associated with that. I believe it's been a balanced
6 approach.

7 Really not much new on the other ones.

8 So we did get a request from RD 17 for their
9 current project against the local cost share of future
10 work within early implementation. Now, there is some
11 additional information that they would need to provide for
12 that. So that evaluation is progressing on whether they
13 would qualify for EIP funds.

14 And not too much new on the Local Levees Program.
15 We have made some decisions on applications that came in.
16 And we are looking to see if there's interest in a second
17 funding solicitation for the Local Levee Evaluation
18 program. We've been making some changes to the guidelines
19 because we want to make sure that we're being as
20 responsible as we can to what the local agencies need in
21 this regard and make the best use of the funds that we
22 have.

23 Floodplain Management Branch. It indicates PAL
24 status for the different project levees in Sacramento
25 County. Of course this is an ongoing process from FEMA.

1 They just, you know, started in the San Joaquin area and
2 they've been moving up the valley. And there's a number
3 of areas on the Sacramento system that they're dealing
4 with PALs on right now. The Department has had a
5 very -- a very extensive dialogue with the City of West
6 Sacramento on their efforts to a PAL. And there's been at
7 least one or two discussions every day on that. So the
8 Department and West Sac have, you know, reached, you know,
9 agreement on an approach that we want to suggest to FEMA
10 that would be kind of the best -- the best mix of, you
11 know, allowing West Sacramento to develop funding so they
12 can move forward with flood projects, so they can reduce
13 the risk in a much shorter time period than it would take
14 if FEMA were to take a really restrictive position on the
15 request that's being made. It could delay things for a
16 number of years. So we're appealing to FEMA on the basis
17 that what's being proposed we believe is entirely
18 consistent with what FEMA's goals are in reducing risk.
19 But we need to do it in a little bit different way than
20 the policy that they have set up right now.

21 And there are a number of other areas where we
22 indicate the PAL status. I think Ricardo is here. If you
23 had any particular questions on any of these PAL status,
24 I'd probably ask him to clarify that.

25 Moving to the Levee Repairs Branch. There's not

1 a whole lot different on it. It's just kind of an update
2 on the progress of the repairs and in different areas.

3 We've really gotten a lot of work done this year
4 as far as Sacramento River Bank Protection Project sites.
5 And especially on the PL 84-99, there's been 127 sites
6 that have been repaired so far. It took awhile to get all
7 that going. But once they got going, they moved quickly
8 and they can do a lot of work in a hurry.

9 And like, for example, the three-mile-long slurry
10 wall in Chowchilla Bypass has been completed. And there
11 was a tremendous amount of negotiation between the
12 Department and the Corps of Engineers to get that work,
13 you know, completed. And so it's a real benefit to the
14 Lower San Joaquin Levee District.

15 Urban levee evaluations. They're moving along.
16 It gives the status here of the various reports that have
17 been -- in various stages of production. And in the
18 interest of time, I wasn't intending to go through those
19 in detail. But I would be happy to field any questions.
20 And of course we've got both the -- the urban levee
21 evaluations that have been ongoing for a couple of years.
22 And on the non-urban levee evaluations, which we're just
23 getting started, and we've kind of worked out a project
24 management plan for that. And we're, you know -- probably
25 I guess we call it a scoping document here, and the PMP is

1 underway right now. And basically it's, you know, setting
2 the criteria for moving forward with a non-urban levee
3 evaluations program. We'll be hearing more about that as
4 the Project Management Plan gets more complete.

5 So with that, is there any questions you have of
6 me at this time?

7 PRESIDENT CARTER: Any questions for Mr. Qualley?

8 Thank you very much.

9 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

10 Thank you.

11 PRESIDENT CARTER: Mr. Bradley.

12 Good morning. Welcome.

13 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Good
14 morning, President Carter, members of the Board, General
15 Manager Punia. Deja vu here a little bit, it seems like.

16 As George said, we're going to be bringing
17 something to the Board -- an item to the Board in
18 December. And I was going to brief the Board a little bit
19 on that. And Jay said that what he would like to have me
20 do is talk a little bit about my office and how it -- and
21 how we're organized and how we will be interacting with
22 the Board.

23 For the record, Steve Bradley, Chief of the
24 Statewide Flood Planning Office within the Department of
25 Water Resources.

1 As you notice, the title on here is Central
2 Valley Flood Management Planning Office. My title
3 officially at the moment is the Statewide Flood Planning
4 Office. I have nothing that is statewide anymore. They
5 moved the statewide flood analysis to correspond with the
6 California Water Plan, so that's out. Almost
7 everything -- well, everything I have responsibility for
8 is now in the Central Valley. And I believe they will be
9 changing or proposing to change the name.

10 (Thereupon an overhead presentation was
11 Presented as follows.)

12 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Today
13 I'm going to talk a little bit about how the Planning
14 Office, the staff and the funding that we have, the
15 programs and the projects, I'm going to talk about where I
16 see Board involvement with my programs, and then a little
17 bit about what will be coming to the Board in December.

18 --o0o--

19 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: This is
20 the budget and the proposed staffing that I will be having
21 over the next five years. I have currently five staff
22 right now including myself. I have four more that will be
23 coming on this year -- four positions. Actually I had
24 seven. Two were moved to the Statewide Flood Planning
25 Office and one I provided Economics. I'm not an

1 economist. That person will be dedicated to working full
2 time on the Central Valley Flood Protection Plan. But
3 it's not something I could really oversee very well, so I
4 transferred it to the economics group.

5 There's a proposal for four more staff next year.
6 And then that will be the maximum staffing - 13 in the
7 office.

8 The budget is -- as you see it on the right, the
9 5 million was for last year, about 10 and -- a little over
10 10 1/2 for this year. The 12, 15, and 6 are proposed.
11 They're part of the Governor's budget, so they have not
12 been approved and will not be until they go forward
13 through the process. These are more or less consistent
14 with the investment plan for the bonds.

15 So, it looks like about not quite \$50 million to
16 do all this work.

17 About 20 percent of that, or 10 million, comes
18 from Prop 84. The other 40 -- or 80 percent comes from
19 Prop 1E.

20 --o0o--

21 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: This is
22 the way the office is organized. I have two programs, the
23 Central Valley Flood Management Planning Program and the
24 Central Valley Local Assistance Program. That is a new
25 program. And the two projects under there: Legislative

1 Requirements Support, that's to local agencies. There are
2 a lot -- a lot of the legislative language that came in
3 required the local agencies to do a lot of things
4 regarding flood control. This will be to provide some
5 support to them. There's a lot of things they have to
6 collaborate on, not only with DWR but also with the Board
7 on some of those things. But this is just to make
8 ourselves available to help facilitate a process to work
9 with them when they have questions on maybe how things
10 should proceed.

11 And then there's an Non-Structural Flood
12 Improvement Grants Program. That's also in the Central
13 Valley. There's been \$30 million essentially set aside
14 for that, primarily for the rural areas. And so that
15 money we haven't developed that program yet, but we will
16 be shortly.

17 Under the --

18 PRESIDENT CARTER: Excuse me, Mr. Bradley. Could
19 you define what a non-structural flood improvement is?

20 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah.
21 Well, it covers a lot of things, and part of the
22 regulations that we'll develop for the grant program will
23 actually define that. But if you look at FEMA, you can
24 actually do some structural things that they consider
25 non-structural - raising a house out of the floodway or

1 relocating a house - that physically they're a structural
2 change but they're considered non-structural flood
3 improvements because you're not building a structure for
4 flood but you are doing some flood damage reduction
5 issues. So you could do things like that. You could buy
6 lands, you know, along a stream, those kinds of things.

7 So you're not doing structural flood
8 improvements.

9 BOARD MEMBER BROWN: Does it include grants or
10 something like -- or range management, cross-fencing, and
11 those kinds of things?

12 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: That
13 has not been defined yet. I don't think there's anything
14 that's been --

15 BOARD MEMBER BROWN: In your budget do you --
16 your budget's obviously greater than what you need for the
17 personnel you have. Is that excess money for grants or --

18 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: No,
19 that doesn't even include the grant program. The budget
20 is -- because most of the work will be done by
21 consultants. We have --

22 BOARD MEMBER BROWN: Contract out?

23 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Excuse
24 me?

25 BOARD MEMBER BROWN: Contracted out?

1 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:

2 Contracted out, yes.

3 We will also have probably -- we expect to have
4 co-located staff from the Corps of Engineers, Fish and
5 Wildlife Service, National Marine Fishery Service,
6 department of Fish and Game, so that we can move forward
7 on this plan, because there's a lot of the issues that
8 have to be resolved and you kind of need a team approach
9 to address those issues.

10 So not only will I have just my 13 staff. There
11 will probably be an additional 10 to 12 people that will
12 be sitting with us. So the overall group will be in the
13 neighborhood of about 25 people. It's been a little
14 difficult getting some of the other agencies to provide
15 staff, but we'll be working on that.

16 --o0o--

17 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Under
18 the Central Valley Flood Management Program, I have the
19 State Plan of Flood Control Project and I have the Central
20 Valley Flood Protection Plan Project.

21 State Plan of Flood Control, there's two items
22 that have to be delivered under that. One is a state plan
23 of flood control description document. The legislation in
24 the Public Resources Code - not in the Water Code -
25 required the Department to develop a document that

1 describes a state plan of flood control. There is no one
2 single document that does describe the State Plan of Flood
3 Control anywhere. There are somewhere in the neighborhood
4 of 130 O&M manuals, but no single document that identifies
5 and describes all the facilities and so forth of the State
6 Plan of Flood Control.

7 BOARD MEMBER BROWN: Will this be revised to the
8 Central Valley? Or are you still going to do it
9 statewide?

10 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: No,
11 this is only the Central Valley. State Plan of Flood
12 Control, yeah, that's a misnomer. We're stuck with that
13 name, and the Legislature put it in. It is -- one, it is
14 not statewide, so it doesn't refer to the state. It is
15 also not a plan. It is really the facilities and features
16 of the flood control system. So it's not really a plan
17 and it's not really the statewide. But the State Plan of
18 Flood Control is what the Legislature called it and how
19 they've defined it in all the legislation.

20 BOARD MEMBER BROWN: So more of an inventory?

21 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: It will
22 be a little bit more than an inventory, but it will be a
23 complete description of the State Plan of Flood Control -
24 all the facilities, where they're located. We're doing a
25 history of the development of the State Plan of Flood

1 Control and how it came about. So it's a little bit more.

2 There's several sections -- what we're trying to
3 do here: The State Plan of Flood Control requires a
4 description of the system. The next item over, Flood
5 Control System Status Report, requires identification and
6 description of facilities. Then when you go further over,
7 the Central Valley Flood Protection also requires some of
8 this. They're all a little bit different. But we're
9 trying to make one document that will cover all the things
10 that are necessary in describing what the state's plan of
11 flood control is.

12 I believe when Paterno hit, one of the problems
13 was we could not tell the courts what the state's plan of
14 flood control is. And so part of this is an attempt to do
15 that, describe the facility, describe the history about
16 it, how did it come about, what we're its goals as it
17 evolved?

18 BOARD MEMBER BROWN: What's the purpose?

19 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Well,
20 one, it's required by Public Resources Code 5096.805J,
21 which says the Department shall do this.

22 BOARD MEMBER BROWN: I mean what are you going to
23 do with it?

24 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: I would
25 expect in the end that it will be -- it'll be a document

1 that anybody can pull off the shelf, that'll say -- if
2 they want to know what the State Plan of Flood Control is,
3 this is it. This describes all the facilities of what the
4 state -- for which the state has provided assurances for.
5 And you can find that all in one place.

6 Also, I would expect it to be posted on both DWR
7 and Board websites, because the State Plan of Flood
8 Control is really the Board's jurisdictional area -- or
9 for which they have jurisdiction in addition to the
10 additional area.

11 But it's required by the legislation that we
12 develop this document. Like I said, it's never been done.
13 There's no one document that describes what the State's
14 Plan of Flood Control is or the State Plan of Flood
15 Control, the facilities and so forth.

16 --o0o--

17 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: The
18 next item over, Flood Control System Status Report.
19 That's what we'll be bringing to you in December, part of
20 it, part of the actions. And they'll talk about that a
21 little bit later. But it's really the legislators'
22 attempt -- legislation's attempt to get at: What is the
23 status of the existing system? How is it functioning?
24 What are the risks associated with that system? On a very
25 cursory basis.

1 And then, finally, we have the Central Valley
2 Flood Protection Plan. That's the development of a plan.
3 The first plan is due in 2012 -- January 1st of 2012, and
4 thereafter every five years, and that's in the
5 legislation.

6 Oh, by the way, the Flood Control System Status
7 Report is -- doesn't exactly have an update -- a required
8 update, but it's as the Board determines. And I'll talk a
9 little bit about that later.

10 --o0o--

11 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Board
12 involvement. Water Code 9120 - this talks about the Flood
13 Control System Status Report - says that the Department
14 shall prepare and the Board shall adopt a flood control
15 system status report for the State Plan of Flood Control.
16 The status report shall be updated periodically as
17 determined by the Board. So whenever you think it needs
18 to be done.

19 And on or before December 31st, 2008, the Board
20 shall advise the Legislature in writing as to the Board's
21 schedule of implementation of this section, that is,
22 preparation of the Flood Control System Status Report. So
23 we're prepared to submit a schedule for you to transmit to
24 the Legislature.

25 --o0o--

1 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Water
2 Code 9610. All the Water Code 9600 through 9625 are the
3 Central Valley Flood Protection Act of 2008. It is what
4 describes the Central Valley Flood Protection Plan.

5 --o0o--

6 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: So
7 Board involvement here, on or before December 31st, 2010,
8 the Department shall prepare a status report on the
9 progress and development of the Central Valley Flood
10 Protection Plan. And the Department shall post this
11 information on the Board's Internet website and make it
12 available to the public. Well, I don't think we can post
13 it to your website without your approval. So there will
14 be some notification -- or some approval required by the
15 Board.

16 --o0o--

17 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: 9612.
18 No later than January 1st, 2012, the Department shall
19 prepare the Central Valley Flood Protection Plan in
20 accordance with this part, that is, the Central Valley
21 Flood Protection Act of 2008, and shall transmit the plan
22 to the Board, which shall adopt a plan no later than July
23 of 2012. So we're to prepare it, but you have to adopt
24 it.

25 BOARD MEMBER BROWN: A question here. We keep

1 calling this a plan. Is it a plan to address the
2 shortfalls or the problem areas within the state and where
3 you'll come up with recommendations of what to do about
4 the concerned areas, or is it more or less just an
5 inventory of what we have?

6 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: No.
7 The State plan of Flood Control and the Flood Control
8 System Status Report that I talked about earlier are the
9 existing system and then sort of identification of what
10 the problems are there.

11 The Central Valley Flood Protection Plan will be
12 a plan and it will be a look at how the system will be
13 moving -- how you want the flood system to look in the
14 future. So it's not just addressing problems. That's
15 part of what it is, but it's flood control for the future
16 within the Central Valley and the Central Valley only.

17 BOARD MEMBER BROWN: So the plan will have
18 recommendations of what to do then?

19 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes.

20 BOARD MEMBER BROWN: And your office would be
21 supplying that to us for review and approval?

22 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes.
23 There will be a lot of meetings with staff, a lot of
24 presentations to the Board over the next two to three
25 years.

1 BOARD MEMBER BROWN: Does it include things like
2 the Arroyo Paso Haro and Silver Creek and all those down
3 there that are non-urban for flood control as well as
4 stabilization practices and --

5 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: There's
6 all those issues there. There's the vegetation on the
7 levees issue. There's the channel erosion issue. There's
8 the escalating cost of operation and maintenance to
9 maintain the system. There's ecosystem issues. There's
10 more than enough issues to go around.

11 BOARD MEMBER BROWN: Would it include watershed
12 management?

13 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes.
14 We're looking at it in a watershed management fashion. In
15 fact, I believe the Corps is going to participate on
16 developing a watershed management plan. That's the way
17 they're going to participate.

18 --o0o--

19 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: 9611.
20 Upon completion of the Central Valley Flood Protection
21 Plan - so after the plan is done - the Department may
22 identify and propose to the Board additional structural or
23 non-structural facilities that may become facilities of
24 the State Plan of Flood Control consistent with the
25 Central Valley Flood Protection Plan. The Board may add

1 those facilities to the State Plan of Flood Control based
2 on a determination showing how the facility accomplishes
3 the purposes identified in Subdivision B, which is that
4 the facility must provide system-wide benefits or protect
5 in urban area.

6 So those are the criteria for adding things to
7 the flood control plan. But, again, here it is. We can
8 propose it. It's up to you to take the action to actually
9 modify the plan.

10 --o0o--

11 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:

12 Legislative mandates. I kind of went through
13 those.

14 December 31st, 2008, you shall send a schedule of
15 implementation for preparation of Flood Control System
16 Status Report to the Legislature. By December 31st, 2010,
17 DWR has to prepare a status report on the progress and
18 development of the Central Valley Flood Protection Plan.

19 By January 1st of 2012 DWR shall prepare the
20 Central Valley Flood Protection Plan. If you notice,
21 between the status report and the plan there's only a year
22 and a day. I mean it looks like two years, but it's
23 really only a year. And so by the end of 2010 we really
24 have to our plan pretty well done in order to meet the
25 January 1st, 2012.

1 And then by July 1st of 2012 the Board is
2 supposed to adopt that plan. You're also required to hold
3 at least two meetings during that time. So I suspect
4 there will be a lot more public meetings than that
5 overall, with what DWR holds, the ones you will hold, the
6 meetings that we will be coming to the Board for.

7 So hopefully everybody understands what's
8 happened by the time and what's going -- there will be no
9 surprises by January of 2012 or July 2012.

10 --o0o--

11 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: In
12 December, we're going to be complying with the first
13 mandate, which is that the Board send a schedule of
14 implementation to the Legislature on or before the end of
15 the year. And so that came about -- it's in Water Code
16 9120, as I talked about before, which is added by Assembly
17 Bill 156 on October 10th of 2007. It was also an Assembly
18 Bill 5. But 156 was signed later, so therefore it
19 controls. It's the same language, so there is no conflict
20 in this part of the legislation. There is in other parts.

21 There is no mandated completion date for when you
22 need to complete the Flood Control System Status Report.
23 But there is a mandate to provide the schedule of
24 implementation.

25 --o0o--

1 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: What
2 the Flood Control System Status Report is required to
3 have, what's defined in Water Code 9120, is that -- it
4 says that DWR shall inspect the levees and review
5 available information to ascertain if there are evident
6 deficiencies. It's just based on available information.
7 We're not to go out and collect anything. Just review
8 available information. We have quite a bit of information
9 on levee breaks, boils, maintenance, those kinds of
10 things.

11 The "inspect protect levees," that's done on a
12 regular basis anyway. It's done four times a year, twice
13 by DWR, twice by the local agencies. So that's available.

14 We have most of the -- collected a lot of the
15 information already regarding deficiencies.

16 And then the legislation just said that the
17 status report shall include:

18 Identify and describe each facility. That
19 means -- again, what we're talking about, the State Plan
20 of Flood Control, you need to identify and describe the
21 facilities here as well as what was required in the
22 State's Plan of Flood Control.

23 Make an estimate of the risk to levee failure.
24 In other words, what is the risk? Can the levees contain
25 the flow that it holds? So we're looking at two things

1 there. That's the ability to convey water and that's the
2 geotechnical stability of the levee itself.

3 It's required to -- the report's required to
4 discuss the inspection review undertaken. I think we
5 would have done that anyway even if the Legislature didn't
6 require that.

7 And then, finally, make appropriate
8 recommendations regarding levees and future work
9 activities. That is, what should we be doing with these
10 in the interim before we come up with a plan? Or maybe if
11 the plan is never implemented, what needs to be done?

12 --o0o--

13 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: In
14 December, we'll be preparing a Board package. In fact,
15 it's really already prepared. It's going through routing.
16 I would expect to have it to -- well, I'm trying to have
17 it to the Board next week. It may slip to the following
18 week. Vacations and so forth.

19 Board packages are typical, have a staff report
20 that explains the issues, have a resolution for you to
21 adopt, and -- that adopts a schedule and authorizes the
22 president or secretary to sign the letter of
23 transmittal -- the letter of transmittal and then the
24 schedule. So that's what will be coming to you in
25 December.

1 BOARD MEMBER SUAREZ: Mr. Bradley, can you repeat
2 that, what's in the resolution?

3 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah,
4 the action items actually are to adopt the schedule. This
5 is your schedule to the Legislature. And then authorizing
6 the President or Secretary to sign the letter of
7 transmittal.

8 BOARD MEMBER SUAREZ: And then the letter of
9 transmittal will be under the signature block of the
10 President or the Board?

11 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: It's
12 under the Board.

13 BOARD MEMBER SUAREZ: Sorry?

14 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes,
15 it's under the Board.

16 SECRETARY DOHERTY: Mr. Bradley, isn't a lot of
17 this work already done? When they did the CVP, I mean
18 didn't we -- there's a system. And obviously we must know
19 what's part of it, what the facilities are.

20 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: There
21 are -- well, you would think so. But it hasn't proved
22 exactly the case. There's been a lot of things that we've
23 found over the last several months that we didn't know
24 about or were not sure about, Kings River being one of
25 them.

1 SECRETARY DOHERTY: Like what?

2 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Kings
3 River flood control system out of the Kings River, where
4 they're -- the State Plan of Flood Control was defined by
5 the Legislature to be things for which the Board or the
6 Department has provided assurances to the United States
7 Government on non-federal cooperation. Kings River is a
8 federal flood control system, but the Department did not
9 provide the assurances on that for the non-federal
10 cooperation. That was given to the Kings River
11 Conservation District to do. It doesn't look like the way
12 the Legislature defined the State Plan of Flood Control
13 that that's part of the facilities for which the
14 Department or the Board is responsible -- for which the
15 state is responsible. It's been the federal government
16 and the Kings River Conservation District.

17 So there's -- that's the Legislature. They made
18 these calls. They also did not include the Board's
19 Designated Floodway Program, which I think certainly ought
20 to be part of the State's Plan of Flood Control. It
21 limits the development on critical streams -- within the
22 critical areas of the streams. And we have -- the Board
23 has 1300 miles of designated floodway. So that probably
24 would be a recommendation of something that should be
25 added to the State's Plan of Flood Control. But we're not

1 there yet.

2 I believe that's it. Are there any other
3 questions?

4 BOARD MEMBER RIE: Yes. In order for the Board
5 to adopt the plan, are we going to need concurrence from
6 the Corps?

7 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: I don't
8 think you need concurrence to adopt the plan. You're
9 going to need concurrence to implement it. It is a
10 federal system.

11 BOARD MEMBER RIE: Well, I would think that we
12 would want the Corps to comment on the plan and give us
13 input before we adopt it.

14 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: They
15 are to be involved in the plan. We're working on their
16 involvement. We expect a Corps of Engineers person to
17 also be setting with us.

18 BOARD MEMBER RIE: And, you know, so that may
19 involve some risk analysis, risk and uncertainty and those
20 sort of things, which takes quite a while. So is that
21 included in the schedule?

22 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: A lot
23 of that's being done under the Levee Evaluation Program.
24 So we will be receiving a lot of information from other
25 programs within the Department - levee evaluations, the

1 floodplain mapping, the hydrology - all of those will be
2 feeding into this program.

3 BOARD MEMBER RIE: And then does the schedule
4 include CEQA?

5 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes, we
6 are planning on doing a CEQA document.

7 BOARD MEMBER RIE: And will we also need to do
8 NEPA in order to adopt this plan?

9 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: We're
10 planning on doing a combined document. That hasn't been
11 determined whether we will be doing that at the moment or
12 not.

13 BOARD MEMBER RIE: Because I would think that the
14 Corps would not be able to comment or endorse the plan
15 unless we do NEPA at the same time.

16 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: They
17 could comment and endorse. They could not begin any kind
18 of construction program without NEPA.

19 BOARD MEMBER RIE: So if the Board --

20 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: And you
21 couldn't get it authorized by Congress if there's no NEPA
22 document.

23 BOARD MEMBER RIE: If the Board is to adopt this
24 plan, how much time are we allowing for CEQA in the
25 schedule?

1 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Well,
2 CEQA will be starting about the same time we start our
3 outreach, which is starting in January, the preliminary
4 CEQA stuff.

5 BOARD MEMBER RIE: Okay. Thanks.

6 BOARD MEMBER BROWN: Does the plan include
7 considerations for the integrated water management
8 concerns that we also share?

9 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Part of
10 this will be addressing those issues. We're trying to
11 make this an integrated plan. The legislation requires it
12 to be a multi-objective plan as feasible. We intend to
13 try to meet that as much as we can, address the ecosystem
14 issues, integrated water management. There are some
15 requirements to address flood control and water supply
16 issues.

17 BOARD MEMBER BROWN: Do you plan to develop a
18 statement of purpose? I'd like to see.

19 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yes, we
20 will have that. We're actually having some meetings
21 coming up this month to pull everything together. Project
22 management plans for everything are supposed to be done by
23 the end of the year.

24 BOARD MEMBER BROWN: So maybe at our next meeting
25 we could share and discuss your statement of purpose where

1 you're headed with this?

2 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:

3 Potentially. We need to vet it through the DWR
4 side first, and the FloodSAFE program essentially.

5 PRESIDENT CARTER: Mr. Hodgkins.

6 VICE-PRESIDENT HODGKINS: Steve, when John and I
7 met with you, I, for one, was impressed by your commitment
8 to work hard on getting public input and engaging all of
9 the stakeholders in the development of this plan. And I
10 think - and I just want to confirm this publicly - that
11 there was an agreement that perhaps bimonthly the Board
12 would put an item on its agenda to offer you an
13 opportunity to give us a brief update on how the plan is
14 progressing and to offer stakeholders an opportunity to
15 come before the Board if you felt there was a problem that
16 in the public outreach wasn't being addressed or technical
17 or whatever.

18 So that we can work with Steve to produce a plan
19 here that in the six months that the Board has to conduct
20 its two public hearings we don't find all of a sudden
21 there are all of these issues coming out of the woodwork
22 that have never been there before. And if you agree that
23 that's our understanding.

24 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah, I
25 believe that was the understanding. And I'd be more than

1 happy to come to the Board on a regular basis and report
2 on the status of the plan.

3 VICE-PRESIDENT HODGKINS: Okay. You know, I
4 think this is important enough, this is something where
5 this Board as members may not be sitting when it comes
6 time to adopt this plan because it's at the end of the
7 current -- after the end of the current Governor's
8 administration, it's going to be important for people to
9 understand - and I think the Board will work hard to find
10 a way to do this - that we are -- we need you to focus
11 early on this plan and come forward with problems so that
12 we can get them resolved as we're going along and not end
13 up in a big brouhaha at the end. And so I at least will
14 be working with my Subcommittee Member John Brown perhaps
15 to bring a resolution to the Board that would formalize
16 that this is the Board's intent and that maybe we're going
17 to keep some kind of a record on who comments and went on
18 and what the resolution is, so there's no misunderstanding
19 at the end as to whether or not the issue was raised as
20 the plan was developed. That's very important. It's
21 going to be hard enough to do this. And I think it's
22 critical that issues get resolved as the planning process
23 proceeds.

24 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:
25 Outreach is a large percentage of my budget.

1 It's probably the key element to getting this plan
2 produced. It's not going to be technical. This is a
3 societal decision that will have to be made. You know,
4 the fix really isn't technical.

5 VICE-PRESIDENT HODGKINS: I agree with that. And
6 I think the Board's -- the point I'm trying to make is
7 from the Board's standpoint, we have in effect six months
8 in the legislation to hold these two public hearings and
9 potentially modify the plan. I think it's very difficult
10 to do that if there are major issues. And I'm trying to
11 get the word out early, starting today, that if you see
12 issues, you need to bring them forward in front of the
13 Board in these bimonthly or monthly updates from Steve so
14 that we can help get some focus on resolving whatever the
15 issue is.

16 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah,
17 the main public outreach will be starting in probably
18 mid-January -- mid to late January. Right now they are
19 interviewing people. You heard George say they
20 interviewed him. They interviewed me and some of the
21 members of my staff. I know that several of the Board
22 members' names are on that list. In fact, I was given a
23 list to look at to make sure that we had a lot of people.
24 And I've already noticed some gaps in there. They didn't
25 have anybody from Fish and Game shown, and we certainly

1 need their input.

2 So this first -- I wouldn't even call this an
3 outreach. It's kind of an touching people with a lot of
4 interest and knowledge in the valley to determine what the
5 issues are and the different views and maybe how to
6 proceed with the overall outreach program. So it's the
7 research phase of the developing the outreach process.
8 It's supposed to be done by the end of December and the
9 outreach plan developed by, oh, mid-January.

10 VICE-PRESIDENT HODGKINS: And then one other --
11 not a minor point but maybe a lesser point. There's been
12 pressure from the Corps to the Board on the issue of
13 encroachments. I think there's a sense on the part of the
14 Corps that perhaps there are too many encroachments that
15 have just become routinely approved and that these maybe
16 compromising our ability to maintain an adequate flood
17 control system.

18 And I think we've told the Corps that we expect
19 that to be addressed as part of this plan?

20 PRESIDENT CARTER: That's correct.

21 VICE-PRESIDENT HODGKINS: Okay. And I didn't
22 hear you say it, but I wanted to make sure you were aware.

23 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah, I
24 was not aware of that. I share some of those concerns
25 actually. By the same token, the Corps has approved all

1 the encroachments. That's part of their job is to approve
2 the encroachments.

3 VICE-PRESIDENT HODGKINS: They're not approving
4 them as a matter of regular course anymore. So we do need
5 to think about that.

6 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah.
7 It makes life tough, I would think.

8 PRESIDENT CARTER: Their specific concerns that
9 they voiced most recently in terms of encroachments are in
10 terms of vegetative growth in the bypass systems. And
11 they're concerned about habitat restoration projects that
12 occur within the flood channels and whether -- and what
13 the threshold is in terms of when that begins to impact
14 the ability of the system to perform as designed. So
15 those specifically were the encroachments that they've
16 expressed recent concern about.

17 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah, I
18 was aware of the vegetative concern and also the
19 ability -- the Corps's interest and basically pressure to
20 have the system analyzed as a system instead of looking at
21 individual encroachments. And so, yes, that's the intent
22 of this plan overall.

23 PRESIDENT CARTER: Okay.

24 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: You
25 know, the comp study really couldn't quite analyze this

1 system as a system. By the time we're done here we should
2 be able to do that.

3 PRESIDENT CARTER: Great.

4 Mr. Punia.

5 EXECUTIVE OFFICER PUNIA: I just want to
6 acknowledge and introduce another distinguished DWR
7 manager. Dan Flory is in the audience. Dan is the
8 Program Manager for the FloodSAFE program, in the matrix
9 management of Steve Bradley of course to Dan Flory.

10 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah, I
11 explained my complicated relationship within the
12 Department. But project-wise for delivering a project, I
13 work for Dan. Administrative-wise I work for George
14 Qualley. So to make that nice and clear.

15 BOARD MEMBER BROWN: Mr. Chairman?

16 Mr. Hodgkins and I have had -- we had one
17 meeting -- subcommittee meeting on this, and it was very
18 informative. And I think this is important enough to
19 where if we could have regularly scheduled monthly
20 meetings or whatever is appropriate, Jay, to --

21 EXECUTIVE OFFICER PUNIA: I think that's --

22 BOARD MEMBER BROWN: -- put on the subcommittee's
23 agenda.

24 EXECUTIVE OFFICER PUNIA: I think that's a good
25 idea. We will be talking to Steve and to both of you, Mr.

1 Hodgkins and you, to come up with a schedule.

2 PRESIDENT CARTER: For anyone in the audience who
3 does not know, this is clearly an important issue to
4 the -- and obviously to the Board. And so the Board has
5 formed a subcommittee with Butch Hodgkins and John Brown
6 sitting on that committee, working closely with Steve and
7 his staff and DWR in this effort.

8 So, we'll have to figure out how the subcommittee
9 coordinates with DWR in this effort and what the
10 appropriate times are to bring the issue -- the entire
11 issue or updates before the Board. We'll rely on you all
12 to give us guidance in regard to that.

13 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Yeah,
14 it's never been my intent to show up on January 1st of
15 2012 with a plan and say, "Here it is." There's no way
16 you could understand what it is and all the issues.
17 That's the reason I volunteered in the meeting with both
18 Butch and John that I would come on a regular basis to the
19 Board and keep you updated at all times.

20 Again, I think Butch is correct that things need
21 to be documented, because this Board is subject to removal
22 at any time under the current standards, even a new one --
23 a new Governor comes in, you could have a new Board. And
24 so I'd hate for all the stuff that everybody's figured out
25 all the way along to be wiped out. So one reason for

1 bringing a resolution to the Board in December for the
2 transmittal of the schedule of implementation is that
3 memorializes what was done and that the Board did adopt a
4 schedule and transmit it to the Legislature. So I think
5 that that's, you know, both to protect what this Board
6 thinks and to protect the Department along the line that
7 all these things should be memorialized.

8 PRESIDENT CARTER: Very good.

9 BOARD MEMBER RIE: One more question?

10 VICE-PRESIDENT HODGKINS: It also protects the
11 stakeholders. So they need to think about that.

12 BOARD MEMBER RIE: Do we have funding for the
13 Corps to participate in the development of this plan? Or
14 does the Corps have funding to participate?

15 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:

16 They -- let's see. Well, they had about \$80,000
17 to start, that was left over from the comp study, believe
18 it or not.

19 I believe -- I think they have a continuing
20 resolution. I don't know if it was signed yet or not.
21 And I think they had a million dollars in there for this
22 coming year, if I'm not mistaken. Rod Mayer or Lani Arena
23 with -- I don't know exactly what the Corps is funding.
24 We've talked about potentially making money available to
25 the Corps to provide staff, you know, through a memorandum

1 of agreement between us and the Corps. There's already
2 one for them to do the hydrology for the Department. So
3 it can be done.

4 BOARD MEMBER RIE: Now, if there's going to be
5 any modeling involved to look at different options to
6 improve the flood control system, who would do that?

7 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: That
8 would probably be a joint effort between the Corps and
9 DWR. DWR would probably run the initial modeling. But
10 you have to have the Corps involved. They're developing
11 the hydrology. They'll have a lot of input on the
12 hydraulic models. They're the big dog in the business
13 here.

14 BOARD MEMBER RIE: Will we know before December
15 whether or not we need to incorporate NEPA into the
16 schedule?

17 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY:
18 Probably not before December.

19 BOARD MEMBER RIE: Okay. Because if we do need
20 to include NEPA -- I don't know if the plan is going to
21 include degradation of levees or setback levees. But I
22 would imagine that the Corps would want to see NEPA if we
23 were to include any of those type of features in the plan.
24 And if we need to go the route of NEPA, we need to start
25 pretty early and incorporate that into the schedule and

1 start now. So --

2 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: We
3 understand that. We're still planning on proceeding with
4 the combined NEPA/CEQA document. It may not be that we
5 need to comply with NEPA, but we're planning on proceeding
6 that way anyway.

7 BOARD MEMBER RIE: Can we go ahead and include
8 that in the schedule just to be safe?

9 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: It'll
10 be in the schedule.

11 BOARD MEMBER RIE: Okay. Thank you.

12 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: It may
13 just be identified as environmental analysis and may not
14 be broken down specifically into NEPA/CEQA.

15 BOARD MEMBER RIE: The only reason why I bring it
16 up is if we were to do an EIS, it's going to take a long
17 time.

18 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Well,
19 same with an EIR essentially.

20 PRESIDENT CARTER: All right. Thank you very
21 much, Mr. Bradley. Appreciate that. We'll look forward
22 to seeing you next month.

23 DWR FLOOD PLANNING OFFICE CHIEF BRADLEY: Thank
24 you.

25 PRESIDENT CARTER: All right. Mr. Connelly, did

1 you want to comment on this item?

2 MR. CONNELLY: Good morning, ladies and
3 gentlemen. My name is Mark Connelly. I work for San
4 Joaquin County Public Works - Flood Management.

5 And I want to just publicly state our support as
6 locals for what Mr. Hodgkins talked about with respect to
7 having bimonthly updates on the Central Valley Flood
8 Protection Plan.

9 We are very eagerly awaiting the phone calls from
10 the consultants I believe who are going to be reaching out
11 to the locals. We think outreach is critical and our
12 participation in the development of the Central Valley
13 Flood Protection Plan imperative, maybe to the point of
14 even possibly considering involving us in Mr. Bradley's
15 team. So that outreach doesn't merely be the output of
16 the planning process reported to the community for
17 feedback, but we have local staff members, interested
18 parties who are part of developing the plan before it goes
19 out to the public.

20 So once again I would just like to state our
21 agreement with the proposal to have bimonthly updates with
22 respect to the Central Valley Flood Protection Plan
23 development. And I thank you very much for the
24 opportunity to speak this morning.

25 PRESIDENT CARTER: Thank you, Mr. Connelly.

1 All right. And I believe we have Ms. Galvez from
2 DWR to give the Board an update on salaries, I guess.

3 DWR STAFF SERVICES MANAGER I GALVEZ: Good
4 morning, everyone. My name is Myra Galvez, and I'm the
5 Manager over Payroll and Benefits in the DWR Personnel
6 Office. And I've been asked my Jay Punia to come and give
7 you a status update on your salaries, because as of --
8 effective January 1, it changed to give you a full salary
9 if you work 60 hours or more.

10 So as you know, we developed that form for you to
11 complete -- certify the hours that you've worked on a
12 monthly basis. And just recently, on November 7th, we
13 received the revised exempt pay letter to be able to make
14 that happen with the State Controller's Office.

15 We did receive four -- from four of you your
16 certification forms from January through September. So we
17 went ahead and keyed your appointment into the State
18 Controller's Office database. However, because you did
19 receive your daily rate per diem, you know, the hundred
20 dollars a day, we need to manually request adjustment pay
21 to the State Controller's Office. And for the four -- for
22 three of the four that did submit their forms, we went
23 ahead and submitted those forms to the State Controller's
24 Office yesterday. And it usually takes them two weeks
25 from the date that they receive it to issue the adjustment

1 pay.

2 December 15th, I believe, is the date that we
3 need to have all of the pay issue in order to hit this tax
4 year -- this, you know, calendar tax year. So, you know,
5 that's what we're aiming for.

6 Mr. Brown, as you know, you're a civil service
7 retiree, so yours is a little bit more complicated. So
8 we're still discussing with PERS how to key you into the
9 State Controller's Office, because we don't want to affect
10 your CalPERS retirement.

11 What else do I have here?

12 We did confirm that you are eligible to receive
13 medical, dental, vision, and retirement benefits. You are
14 also eligible to enroll in the Long-term Care Program but
15 not the Long-term Disability Program.

16 I'd also like to know if -- if you have any
17 idea -- if you're interested in enrolling in the benefits
18 or if you want to receive the cash in lieu of benefits.
19 Are you familiar with the consolidated benefits cash if
20 you -- if you don't enroll in health and dental, you're
21 eligible to receive a monthly dollar amount for waiving
22 those benefits. So we talked with -- we spoke with DPA,
23 and they said that if you're going to enroll in health and
24 dental -- to enroll in dental on a current basis we have
25 to submit the dental enrollment form directly to DPA with

1 an appeal memo. The same will go for CalPERS, and that's
2 what we're confirming with them, but we're receiving a
3 call back from them.

4 Let's see, what else do I have here?

5 I have the forms for you to -- if you're
6 interested in enrolling in the dental and the medical as
7 well as the CoBen cash if you don't want to enroll in the
8 dental and medical. And I also have a consolidated
9 benefits brochure that explains to you the dollar amounts.
10 And on the last page it has the premiums that are for
11 health and dental.

12 Let's see, what else?

13 The payroll process for you all will be once that
14 you're -- the salary check will automatically issue with
15 us once we receive your certification forms. At that time
16 is when we will release the monthly payroll warrant that
17 will issue. October and November have already issued, but
18 we haven't received the forms. So we're unable to release
19 that pay at this time, until we receive those forms.

20 Do we have any questions for me on anything?

21 BOARD MEMBER RIE: Do you need us to fill out a
22 W-2 or W-4?

23 DWR STAFF SERVICES MANAGER I GALVEZ: That would
24 be a standard 686 form. That's if you want to change your
25 withholdings. But -- yes. I didn't confirm if, do any

1 deductions come out of your per diem rate? No.

2 Then, yes, we need to get a standard 686 form.

3 And Lorraine and Jay could get that to you guys.

4 BOARD MEMBER RIE: Okay.

5 DWR STAFF SERVICES MANAGER I GALVEZ: As of now
6 if any of you are interested in getting any medical and
7 enrolling in any of those benefits? Anyone interested?

8 SECRETARY DOHERTY: I'd have to see what you've
9 got.

10 DWR STAFF SERVICES MANAGER I GALVEZ: I'll leave
11 that with Lorraine. And then the sooner we get input
12 back, the sooner we can hopefully hit this calendar year.
13 Okay?

14 PRESIDENT CARTER: Very good. Thank you very
15 much for coming.

16 DWR STAFF SERVICES MANAGER I GALVEZ: Thank you.

17 PRESIDENT CARTER: Okay. Ladies and gentlemen,
18 let's take a ten-minute recess, and then we will continue
19 with Item 6 on our agenda.

20 (Thereupon a recess was taken.)

21 PRESIDENT CARTER: Ladies and gentlemen, if I can
22 get you to please take your seats, we'll go ahead and
23 continue with the meeting.

24 As you recall, we just wrapped up Item 5. We'll
25 move on to Item 6.

1 I do want to note for the record that Member Teri
2 Rie arrived at 9:20 this morning. Thank you.

3 So with that, we'll move on.

4 Mr. Brunner, the Three Rivers Levee Improvement
5 Authority monthly report.

6 Good morning. Welcome.

7 MR. BRUNNER: Good morning, President Carter,
8 members of the Board. I'm Paul Brunner, the Executive
9 Director for Three Rivers. This is my monthly update to
10 you.

11 And I'd like for you to turn to your monthly
12 update that we give. And what I typically will do is go
13 through and give you the highlights and move through
14 rather quickly hopefully and then ask for questions at the
15 end. Or feel free to interrupt me as I go through.

16 I put the graphic here this time because a couple
17 of my reference points I wanted to make sure not only
18 yourself but members of the audience had a chance to
19 understand where I was speaking to.

20 The graphic itself, this is the Yuba, the
21 Feather, and the Bear River here. And the water is
22 flowing to the south. We're working on all the various
23 levees that were in color. Some are being completed
24 historically and reported to you before on that.

25 With the report, I would like to start really on

1 the levee design and construction work. Scott is still
2 working with Ginny on the Item No. 1 on the administrative
3 action that's listed there.

4 On the construction, the very first item that's
5 listed is the report -- the hydraulic report on the Yuba
6 River patrol road. That's this area in blue up in through
7 here. I've been reporting to you several times -- or many
8 times over the last year that we've been working with the
9 hydraulics with the Corps and back and forth. Well, we
10 have now finally finished our hydraulic analysis, and that
11 has now been submitted to the Corps and DWR for their
12 review.

13 During the review, it took into a couple
14 different accounts. There was some additional flows that
15 were added to it from the Goldfields area, which is right
16 up in this area in through here. And also we removed the
17 south training levee -- or the training levee on the Yuba
18 from the analysis, which allowed some more water to flow
19 towards that levee. The end result is that there will be
20 more water and water will actually reach the patrol road
21 levee. We're going to be taking that input already and
22 providing it to our design engineers, HGR, that's working
23 on the project now under contract.

24 Hopefully in the near future they'll be doing
25 some soil borings out there and get back results as to if

1 we have an underseepage issue or not on patrol road. So
2 that will be a future discussion that we'll be able to
3 come back and have more discussions about.

4 On the Feather River project, which is shown here
5 from the Yuba down to the Bear, we've broken the project
6 up into three different segments, segments 1, 2, and 3.
7 All of you've been on the tour before, I believe. Not
8 everyone has gone on the tour yet, but the -- a lot of
9 good progress has been made on the project.

10 On segments 1 and 3, Segment 1 here we've been
11 working on it throughout the entire construction season.
12 The project is essentially wrapping up. In fact, the work
13 is done except for a couple items. There's a -- the levee
14 work down in through here is completed, but there are some
15 of the under -- the relief wells that needed to have caps
16 put on them and some drainage system that runs into a
17 drainage slope installed on that.

18 So we've been working on it. We have an
19 extension from the general manager to work to the 23rd. I
20 was talking to Steve Dawson here. It might take into next
21 week where we'll be working through to get that extended
22 that will allow us to do that work. And he seems to be
23 amenable to that.

24 SECRETARY DOHERTY: Pardon me, Mr. Brunner. May
25 I ask you.

1 You said that you had removed on one of these
2 setbacks the inner levee. Did I understand that or -- and
3 the water was able to spread out further. Which section,
4 if you could point out?

5 MR. BRUNNER: We have removed this levee down
6 through here --

7 SECRETARY DOHERTY: Yeah, that one.

8 MR. BRUNNER: -- which for the Bear. We haven't
9 done anything on this one yet to remove a levee.

10 SECRETARY DOHERTY: Oh, so it was just the Bear
11 when you were talking about it.

12 PRESIDENT CARTER: I think you were referring to
13 the Yuba River and in relation to the hydraulic analysis
14 and full control --

15 MR. BRUNNER: Oh, yes, on that. Earlier I was
16 talking about this area up here back on the Yuba. Our
17 design analysis that the Corps asked us to look at, there
18 was a training levee up in through here that they asked us
19 to remove from the analysis. The levee is still there.
20 We did not construction-wise do anything. But we did take
21 that out of the model. Which the end result there was
22 that allowed the water to spread out.

23 SECRETARY DOHERTY: All right.

24 MR. BRUNNER: Okay. So the one outstanding item
25 that we have on Segment 1 is the crack George Qualley

1 reported to you. We have worked through on that to --
2 with the Corps and DWR to continue to do a monitoring. It
3 is covered with visquine plastic on top on it. We have
4 prepared an emergency response plan that we gave to DWR to
5 review, and also RD 784 and others, waiting for that
6 feedback. But we're prepared, and along with RD 784, to
7 respond if needed during the rain season.

8 We have done additional monitoring lysimeters and
9 different other things on it to see if the crack's moving
10 or widening. The data from those monitoring equipment
11 shows that it's really stabilized and there's very slight
12 movement at all that's occurring at this point, which is
13 good news. So essentially stabilized. We'll monitor it
14 throughout the winter.

15 My board just passed an amendment to my contract
16 for another about \$252,000 to do increased monitoring on
17 it and put in some other types of equipment out there to
18 define the soft clay layers that I think Larry Dacus
19 reported to you last time that was underneath -- that we
20 have found to be underneath the levee today -- to define
21 that to see what the extent is. And that will end up
22 pointing towards eventually over this wintertime as we
23 work with the Corps and DWR as to what the final fix will
24 be. And once we have that monitoring data back in, we'll
25 take that data, get the fix, and we'll install it next

1 year, most likely in the may, June time period hopefully.

2 On Segment 3, this northerly portion here on the
3 Feather, good progress was made on that too. That was a
4 construction season project. This Segment 3 was part of
5 the early implementation project along with Segment 1.

6 Segment 3 is really wrapping up and the levee
7 work is completed. But we did extend some of the work to
8 November 23rd. And there was some paving area right up in
9 through here where we did some gate valve -- or valve
10 along the railroad track that we had to put in that's
11 ending up now. So Segment 3 will essentially be -- will
12 be complete. So that's a success story for us on it for
13 that portion of the levee.

14 Now, on segment 2, which is the middle section -
15 this is where we have the setback - we've also had really
16 tremendous progress occur on this one too. This is the
17 existing levee here, and the setback location is right
18 here.

19 I'm going to use another graphic that highlights
20 this a little bit better. This being right here is Star
21 Bend and this is Shanghai Bend right down here. The
22 existing levee runs along here. And this is the setback
23 location through here that's highlighted in yellow and
24 blue.

25 These other areas that are yellow and blue

1 outside the alignment are our borrow site areas that we're
2 hauling dirt out to actually build the embankment.

3 A lot of good progress has gone on this setback
4 levee. This is Part A of our current encroachment permit
5 that we have with you.

6 This area here on the south end here is where we
7 focus attention immediately and we started work this year.

8 The levee today that you had a chance to visit,
9 many of you, is now up to grade, 25 feet high. We have
10 the stability berms now being trimmed in there. And so
11 that it was really taking shape and looking like a real
12 levee in that area. So that extends about for a mile.

13 The area from here to here is about five miles of
14 foundation work. The foundation work along that reach is
15 all completed. The four and a half miles of slurry wall
16 is now completed in that area. About 30 percent of the
17 embankment work that we have along the levee reach, not
18 only in this area is being worked, but this levee is
19 coming up out of the ground here and on various portions
20 through here once build it. If you were to visit us
21 today, you'd see hauling coming out of the platter site
22 right by the Teichert construction site.

23 The Ellis site down here where we're
24 over-excavating an area, it will actually become an RD 784
25 detention area that helps serve their needs when we get

1 done with the excavation. So we're hauling dirt in this
2 way.

3 And then this area in here is several areas we
4 referred to as the Naumes site where we're hauling -- just
5 earlier this week we started our scrapers to start hauling
6 from that to our levees.

7 So it's really a tremendous -- we're taking
8 advantage of the opportunity of a dry winter so far to
9 keep working on the project.

10 Yes.

11 SECRETARY DOHERTY: When you are hauling from
12 those borrow pits, are you taking it to another site where
13 it's mixed so that it's the proper consistency for a
14 levee, or are you just simply taking it straight from the
15 borrow pit to the levee?

16 MR. BRUNNER: From this site and this site we are
17 taking it straight to the levee, because this soil already
18 meets this spec. Where they're initially going from the
19 Naumes borrow, they're not doing any mixing. Teichert is
20 trying to avoid those areas. Potentially we will end up
21 having to do mixing.

22 SECRETARY DOHERTY: So you're taking -- where
23 those blue marks are, you're taking that dirt somewhere
24 else?

25 MR. BRUNNER: No, the --

1 SECRETARY DOHERTY: Are you just leaving it?

2 MR. BRUNNER: No, the blue area in here, we are
3 scraping from here and taking it to the levee site. It
4 could be yellow or blue along the alignment where they're
5 hauling to. Most likely they're hauling from here and, as
6 they build the levee, in through here.

7 The mixing will occur on site if we have to do
8 mixing. They'll bring in dirt. And they'll do their
9 mixing and then transport it to the alignment.

10 SECRETARY DOHERTY: So there's constant testing
11 for the soil going on all the time, is that right?

12 MR. BRUNNER: Yes, there is quality control and
13 testing that goes on, where they'll take samples before
14 they do the digging. They have their soil borings that
15 they know what type of soil was there before. But as it
16 goes through, that's part of the quality control testing
17 that we have to do.

18 And then later on when we get done with the
19 project, we have to take all that data, compile it. And
20 then it's part of the certification process to demonstrate
21 that the levee was constructed complete -- correctly.

22 SECRETARY DOHERTY: Thank you.

23 MR. BRUNNER: So on Segment 2 as far as the
24 construction, tremendous progress has occurred. We did
25 run into one potential issue for us. And it's right down

1 in here. Not in the yellow area, but between the yellow
2 and Star Bend. One of the tie-in areas. We were working
3 and removing some trees and nonjurisdictional water, so we
4 had the authority to work in that area. We ran into a new
5 cultural site. As we removed some of the trees, we
6 uncovered a jawbone and some burial tribe bowls and
7 different things that were there. So we took the process
8 and we notified the Corps and the indian tribe, and
9 they're working with us through this. So that will be
10 something that we'll -- as we go to do the work, the
11 tie-in, next year, hopefully we'll have that cleared out
12 and resolved before that time to go forward. But that is
13 something that's new on our plate that we're now working
14 with.

15 We had other cultural sites that we dealt with
16 already on the project. And so it's the same indian tribe
17 that we're working with. And we already have the
18 agreements worked out on how we'd proceed. So we had
19 archeological people on site to help out as we worked
20 through that.

21 Now on the other part of the projects that we
22 have, for us to accomplish the tie-in work, we've been
23 working extensively with the Corps of Engineers to get the
24 federal permits. And I do have -- even though it's taken
25 some time to get here, I think we're very, very close to

1 finally getting the federal permits issued to us. The
2 Corps of Engineers Federal EIS document is scheduled to go
3 final, final 30-day notice that's in the Federal Register
4 today, on November 24th. The Corps has indicated that
5 they're preparing the ROD to be signed - Record of
6 Decision - the first week of December.

7 And during that same time, we will then -- the
8 schedule is that we will have not only their EIS
9 finalized, but they will issue the 408 permit -- or 408
10 approval along with the 404 permit that would allow us to
11 do this work. That's a big step. That's a huge step for
12 us. The 408 approval letter that the Corps District
13 Office sent forward to the District and up to Headquarters
14 went out on 13 November. It identified no issues for us
15 to go through. And they were satisfied with our project
16 and design. So that worked very well and they asked that
17 the 408 be approved by 3 December.

18 So really great success in that regard.

19 Because of the 408 process and the federal
20 permitting, we have rebuilt our schedule. It's in -- so
21 the project on the tie-ins will go next year, along with
22 the other embankment work on the area that I described
23 before as we work through it. We originally had the goal
24 of 2008 to get through, and it became -- well, the federal
25 permits had really preempted that for us to get there.

1 So we are working on the levee work as soon as
2 the project gets going again. Forecast is that we will
3 get -- the project get going in probably around the May
4 time period when we can get back to the levee and
5 we'll -- and start the tie-ins. That's this area here and
6 here.

7 Once we finish this work, our goal is to then
8 degrade this levee here, the existing levee. And that's
9 something that will be coming before the Board because you
10 have not yet issued your encroachment permit for that.
11 The 408 process that we just went through approval
12 addresses that. So you do have your -- you will have your
13 approval for that once the approval's given from the
14 Corps.

15 We've turned in our application within the last
16 week to your staff to start that process. So in a coming
17 Board meeting, it'd be good to -- you'll have a chance to
18 say "yes" or "no" on that for the encroachment permit to
19 degrade the levee. We will not degrade the levee until
20 the new levee's in place and people feel comfortable with
21 that. But for us, it would be really good to have that
22 step out of the way so when the opportunity comes up next
23 construction season, we can get going. We can then start
24 to fill the borrow site holes that we created when we
25 built the levee and move forward.

1 It's important for us to also get that because
2 this area in through here, part of our 404 permit we have
3 a wetlands mitigation plan that we're working through.
4 And part of that plan is to actually bring it back up to
5 grade and work with the existing wetlands in the area to
6 expand. And Teichert will be our construction arm on
7 that. And Teichert's doing the construction on the levee.
8 So if we got that, we can get the approval to degrade the
9 levee, we could then start to move that dirt in and create
10 that wetlands next summer and into the fall time period.

11 PRESIDENT CARTER: Mr. Brunner, when you --
12 assuming you get the 408 approval, and you have the 404
13 permit, and the tie-ins are complete next year, the Corps
14 will come out and inspect. And will they then adopt that
15 Segment 2 as part of the federal levee system?

16 MR. BRUNNER: Well, I think it will be clear that
17 they could or not. To date there's still some discussion
18 about the Bear setback as to how it fits specifically into
19 the system. So I think it would be in the position to be
20 accepted into their system. It'd probably be best to get
21 the Corps input back as to exactly how to do that. But
22 that may still have some missing pieces to it. I'm not
23 sure.

24 PRESIDENT CARTER: I think considering our
25 experience with the Bear and the fact that that's been

1 constructed and the old levee's been degraded and we have
2 been waiting for two years now for the Corps to adopt that
3 as part of the federal system, that would be a
4 consideration for this Board in terms of granting an
5 encroachment permit to degrade the existing levee there.
6 We'd want them to have some sort of a commitment to pursue
7 that posthaste.

8 MR. BRUNNER: Well, I think we can put a
9 condition in there. It would be -- I'm not quite sure if
10 you were talking about putting a condition in there for us
11 not to be able to degrade until they actually adopted it.
12 That would be actually counterproductive for us in case
13 they did not react, because then it would impact our
14 ability to just refill the holes that we created at the
15 site, and just having large borrow holes out there through
16 another flood season accumulating water in that area, and
17 that is not productive. So I would look for some other
18 way of trying to work with the Corps to make sure that we
19 have a process or agreements to a schedule.

20 PRESIDENT CARTER: I guess I would plant the seed
21 with the Corps now that they begin consideration of that
22 and understand that the prospect -- or that the levee
23 might be ready to be adopted as part of the federal system
24 next summer and they should be prepared to -- or be
25 getting their ducks in a row to act on that hopefully next

1 summer.

2 MR. SHAPIRO: Good morning, Mr. President,
3 members of the Board. Scott Shapiro, General Counsel for
4 Three Rivers. I want to respond specifically to the
5 comments you're raising, President Carter.

6 I've actually talked about this issue with Jim
7 Sandner, Chief of the Operations and Readiness Branch of
8 the Corps. And the Corps believes that the 408 approval
9 it gave on the Bear River is the document that
10 incorporates it in. I understand your staff disagrees
11 that that is an adequate and complete record to document
12 the problem. And so unless you object, Three Rivers is
13 pleased to take the lead in trying to bring you and the
14 Corps together in a meeting to specifically discuss this
15 issue and to try to get resolution on, is that the
16 official federal government action required? And if not,
17 can we get further action that's required so we can
18 resolve this issue? I know it's been outstanding for a
19 long time. I had hoped that the Corps would resolve it,
20 because I know Mr. Punia has made this point to the Corps
21 a number of times. But we're happy to take the lead in
22 setting up that meeting, if that would be the Board's
23 preference.

24 PRESIDENT CARTER: I don't believe we've had any
25 official notification one way or the other on what their

1 stance is with regard to the new Bear setback levee.

2 MR. SHAPIRO: I would agree. It's all been oral
3 communication from Jim. But if you're okay with it, we'll
4 take the lead, we'll get that set up, and we'll try to
5 resolve it for not only the Bear River, which is complete,
6 but for every future project.

7 PRESIDENT CARTER: Okay.

8 MR. SHAPIRO: All right. Thank you.

9 PRESIDENT CARTER: We'd appreciate that. Thank
10 you.

11 MR. BRUNNER: The other last remaining part of my
12 report just really deals with building permits. And you
13 can still see it's fairly flatlined in the Yuba County
14 area.

15 And that concludes my report. Is there any
16 additional questions?

17 SECRETARY DOHERTY: Where is the break? On
18 Segment 1, according to my book. That's the Bear setback,
19 right?

20 MR. BRUNNER: The break or the -- you're asking
21 for the break --

22 SECRETARY DOHERTY: Where the crack is.

23 MR. BRUNNER: The crack. Let me go back to the
24 other graphic to show you.

25 The crack is right about here. If you know the

1 Shoei Food Packaging Plant that's right on Feather River
2 Boulevard, it's right behind that facility there is where
3 the crack is.

4 BOARD MEMBER BROWN: Mr. Chairman?

5 I took the liberty to fly over this project week
6 before last at about 1500 to 2,000 feet. And you really
7 get a different perspective of the project. In regards to
8 that, it looked like up on the top of Segment 3 there --
9 from the air anyway, it looked like there needed to be a
10 tie-in to something up there. It just kind of starts out
11 like in the middle of nowhere. Is there an additional
12 tie-in or does it just appear that way from the air?

13 MR. BRUNNER: Well, Segment 3 is from here to
14 here.

15 BOARD MEMBER BROWN: Right, the upper end, the
16 north end, up to Yuba.

17 Is there a tie-in?

18 MR. BRUNNER: No, I think this levee actually
19 goes right around underneath the freeway.

20 BOARD MEMBER BROWN: It does tie-in to it?

21 MR. BRUNNER: Yes. We have no project to do
22 that. So, yeah, I -- all indications are from when I
23 drove -- driven around to that, the levee goes through
24 there.

25 BOARD MEMBER BROWN: Are you sure water's not

1 going to be running on the easterly side of that levee
2 then when the rains come?

3 MR. BRUNNER: I'm going to say yes to that. We
4 do have representatives from R D 784 here I could ask to
5 come up too that maintain the levees in regards to that.
6 But none of our hydraulic reports in that would indicate
7 that that's an issue if the levee is there. I mean it's
8 gone through many different storms before. And the '86
9 break was up here and the water flowed through here on the
10 levees and around the levees; the '97 break through here.
11 So it's experienced high waters before underneath Highway
12 70.

13 BOARD MEMBER BROWN: Okay.

14 PRESIDENT CARTER: Any other questions for Mr.
15 Brunner?

16 Thank you very much.

17 MR. BRUNNER: Thank you.

18 PRESIDENT CARTER: Okay. We'll move on to Item 7
19 on the agenda -- I'm sorry -- Item 9. We do not have any
20 hearings or decisions and no consent today.

21 So Item 9, Requested Actions. Title 23 proposed
22 amendments. To consider proposed amendments to Title 23
23 regulations and direct staff to forward proposed
24 amendments to the Office of Administrative Law for
25 publication in the California Regulatory Notice Register.

1 Ms. Smith, good morning. Welcome.

2 DEPUTY ATTORNEY GENERAL SMITH: Good morning, Mr.
3 President and members of the Board. I'm Debbie Smith with
4 the Attorney General's Office. And also here on this item
5 are Nancy Finch and Dan Fua.

6 (Thereupon an overhead presentation was
7 Presented as follows.)

8 DEPUTY ATTORNEY GENERAL SMITH: I have a very
9 brief PowerPoint presentation, maybe.

10 PRESIDENT CARTER: I'm sorry, Ms. Smith. I am in
11 error. There was one member of the public that did want
12 to comment on the Three Rivers report. Do you mind if
13 we --

14 DEPUTY ATTORNEY GENERAL SMITH: No, of course.

15 PRESIDENT CARTER -- allow him to address the
16 Board?

17 Mr. Eres, I apologize. I overlooked your card.

18 MR. ERES: Thank you, Mr. President and members
19 of the Board. Thanks for the opportunity of addressing
20 you.

21 My subject here has to do with hydraulics. Tom
22 Eres representing Hofman Ranch, located up in the Yuba
23 County area.

24 We're very concerned about the crack that you
25 were briefed on a little earlier. We're concerned about

1 looking at it in the context of hydraulic modeling and the
2 adequacy of the hydraulic modeling, and would ask that
3 there be a more rigorous involvement of your staff with
4 respect to trying to track for the best interests in
5 public safety these hydraulic models and the assumptions
6 that go into the models.

7 We would suggest that as you're looking up along
8 the Simpson Lane, the south levee of the Yuba River, the
9 area, Mr. Brown, you were just talking about, as well as
10 coming down to the Bear River and the difficulties -- the
11 issues that were raised when they were doing the Bear
12 River setback levee of the hydraulics as it got close to
13 the Feather River.

14 And now we have a crack with respect to the
15 landside, not the waterside, the landside portion of the
16 Feather River 600 feet in length. I know that Three
17 Rivers is taking an active effort with a new contract to
18 do more work. I know that they're keeping Mr. Hester
19 involved in the process. But I commend to the Board that
20 you look at the communications that are being submitted
21 tracking that crack, because it may be an indication, and
22 our concern is, of something far more -- much more an
23 Achilles' heel, I guess, with a lot of assumptions that
24 have been made in putting the entire Feather River Project
25 together as well as Three Rivers Project. Because the

1 hydraulics we think up there is far more squishy, for lack
2 of a good Latin term, than is being depicted by the
3 models. The models of course are an assumption. Factual
4 data is not all that easy to come by in terms of
5 historically. And we think there's an issue here that's
6 been complicated along the Western Pacific Interceptor
7 Canal, the left or, if you will, the western boundary,
8 when they were looking for a -- I guess a conduit out
9 there. They found water about six feet down on the
10 landward toe of that levee as they were digging a trench
11 looking for the conduit.

12 And, again, it looks like what they're telling us
13 is that because there's a permanent pond on the other side
14 of that levee, that it's not inappropriate to have this
15 new levee sitting on top of that land and on the toe-ward
16 side at six feet down you would find water. Mr. Fua's
17 been very helpful in working with the Corps of Engineers
18 to get us information about that.

19 I raise that point to say if we begin to
20 quadrangulate between the Feather, Yuba, Bear, Western
21 Pacific Interceptor Canal and we're looking at a common
22 denominator and, that is, the adequacy of the hydraulic
23 analyses that are being prepared and for which close to
24 \$330 million is being spent, thereabouts, at least at
25 current counting, in terms of the levee improvements, and

1 we think that it needs more attention, and it should not
2 be -- not that it's being glossed over, but I think that
3 the status of it has been given just a little bit too soft
4 a shift here.

5 I would also suggest one of the things that is a
6 little confusing to Ms. Hofman is this issue of 100-year
7 certifiable, accredible standards with respect to what
8 we're looking at in terms of these improvements and then
9 this so-called 200-year design something. And the reason
10 I am vague about that is that it is vague. I've looked to
11 the Corps of Engineers and the state to find out is there
12 actually an approved standard now for 200-year protection?
13 And I'm told, "No, in process." But I find that when we
14 look at the documents, reports, the studies that are
15 submitted to you and to the public, we have a very -- and
16 sometimes they refer to a 100-year, sometimes they refer
17 to 200-year. And at the end of the game what are the
18 metrics that you're looking at under hydraulics? Are you
19 looking at hydraulics as relates to a current Corps of
20 Engineers standard of 200-year, FEMA accreditation standard
21 of 200-year, or 100-year? I think it's 100-year.

22 So from the public's standpoint, I've -- I think
23 I've concurred with Steve Bradley over the years. I think
24 this idea of 100-year, 200-year, and 300-year is the wrong
25 terminology and the wrong metric. It's design,

1 capability, and the capacity of your flood work. Using
2 these 200 years I think gives a very false impression to
3 the public, and particularly in this area of Plumas Lakes,
4 which is the primary purpose I believe of these
5 improvements. I think people out there may be getting the
6 false impression that somehow there is a 200-year
7 protection being afforded to the public, that they're
8 going to be protected for 200 years. And you know how
9 that communications process goes.

10 So I really think that the point here is we need
11 more rigor with respect to Three Rivers and the
12 hydraulics, the actual models and the assumptions that are
13 made, and suggest this crack may be an indication that
14 there needs to be much more involvement of this Board with
15 respect to what's going on out there.

16 Thank you very much.

17 PRESIDENT CARTER: Thank you, Mr. Eres.

18 BOARD MEMBER BROWN: Mr. Chairman?

19 PRESIDENT CARTER: Yes.

20 BOARD MEMBER BROWN: Just as maybe a brief
21 follow-up to that, we might ask Jay or staff to go ahead
22 and just take a second look at the entrance hydraulics
23 into that Segment 3 area just to double check it. But it
24 just didn't look right from the air, but I'm sure it is.
25 But on that basis I think it's just worthy of a tertiary

1 look once again.

2 PRESIDENT CARTER: Well, and the hydraulic
3 report -- the hydraulic analysis was just completed and
4 published. So I'm sure that staff plans on reviewing
5 that, along with DWR and the Corps, for the Yuba River.

6 EXECUTIVE OFFICER PUNIA: Yes, I think Gary's
7 involved. And he has checked with hydraulics. And he had
8 a meeting with Miss Hofman on the hydraulics too. So he
9 will continue to keep a close eye on this project.

10 PRESIDENT CARTER: Okay. Thank you.

11 All right. Moving on. Item 9.

12 Ms. Smith. Sorry for the delay.

13 DEPUTY ATTORNEY GENERAL SMITH: Oh, no problem.

14 Thank you, Mr. President. Again, for the record,
15 I'm Debbie Smith from the Attorney General's Office.

16 (Thereupon an overhead presentation was
17 Presented as follows.)

18 DEPUTY ATTORNEY GENERAL SMITH: And I'm pleased
19 to present to the Board today the final drafts of the Tier
20 1 regulations.

21 --o0o--

22 DEPUTY ATTORNEY GENERAL SMITH: The purpose for
23 today's presentation is to hopefully gain the Board's
24 approval to start the formal regulations adoption process
25 for the Tier 1 regulations that we are proposing. And

1 that would mean that once we get the Board's approval, we
2 would forward the regulations to be published in the
3 California Regulatory Notice Register --

4 --o0o--

5 DEPUTY ATTORNEY GENERAL SMITH: -- by the Office
6 of Administrative Law. That triggers a 45-day public
7 comment period where the public can provide comments to
8 the Board. After the 45-day comment period staff will
9 consider all of those comments, if there are any, and
10 decide whether to make changes to the regulations we've
11 proposed. And if there are any changes made, that may
12 trigger an additional notice period or periods.

13 --o0o--

14 DEPUTY ATTORNEY GENERAL SMITH: Once the 45 days
15 and all the final changes are made, any changes are
16 incorporated, then staff prepares a summary and responses
17 to all of the comments, puts that into a document, and
18 also prepares a final statement of reasons.

19 --o0o--

20 DEPUTY ATTORNEY GENERAL SMITH: Once that is
21 done, we return to the Board for final approval of the
22 regulations to be transmitted to the Office of
23 Administrative Law for their approval. Once that is
24 done -- or once the final regulations are approved by the
25 Board and forwarded to the Office of Administrative Law,

1 OAL has 30 days to provide comments and suggestions. They
2 can either approve, disapprove, or provide suggestions for
3 changes.

4 --o0o--

5 DEPUTY ATTORNEY GENERAL SMITH: We've been before
6 the Board a number of times with these regulations. But
7 just as a summary, the sections that we are changing --
8 are proposing changes to are sections 1, 3, 4, 5, 6, 7,
9 and 8 --

10 --o0o--

11 DEPUTY ATTORNEY GENERAL SMITH: -- as well as 13;
12 15; Table 8.1, which is a part of Section 112; Section
13 109; Section 120; Appendix A to Section 193, which is the
14 application for encroachment permits.

15 --o0o--

16 DEPUTY ATTORNEY GENERAL SMITH: We're also
17 proposing some new sections to add to the regulations in
18 Title 23, mostly relating to the new legislation of AB 5
19 Section 5.1, dealing with ex parte communications; 13.1
20 and 13.2; and Section 138.

21 --o0o--

22 DEPUTY ATTORNEY GENERAL SMITH: And basically at
23 this time I'd like to open it up to the Board for comments
24 or questions.

25 BOARD MEMBER BROWN: I have some, Mr. Chairman.

1 PRESIDENT CARTER: Go ahead.

2 BOARD MEMBER BROWN: If you can maybe move to
3 page 12, Debbie, paragraph 3.

4 DEPUTY ATTORNEY GENERAL SMITH: And that's on
5 Section 5.1 dealing with ex parte?

6 BOARD MEMBER BROWN: Yes. And Item D on that, if
7 you're on that page, it says, "When the ex parte rules of
8 this section attach, any Board member may only take a
9 field trip to the site of a proposed project or a pending
10 enforcement action if ten days' advance notice," and so
11 forth.

12 I would add in there after "may only take a field
13 trip" "with a party." It does not preclude him or her
14 from going to the site by themselves or with another Board
15 member, if I understand ex parte correct. So I'd add
16 "with a party." I don't know whether you concur with
17 that.

18 DEPUTY ATTORNEY GENERAL SMITH: I would just want
19 to make sure that "party" is somewhere defined and clear.
20 But I can certainly take a look at that and --

21 BOARD MEMBER BROWN: Yeah. Party on either side
22 of the issue is what I intend it to be. Otherwise every
23 time a Board member wanted to go out and visit a site like
24 we're planning to do, Butch, is just you and I on a couple
25 of these, and maybe another Board member, we'd have to

1 give ten days' notice. And I don't think that's what's
2 required.

3 If you go to page 3 then, then the next section,
4 whatever that is, after that.

5 BOARD MEMBER RIE: Mr. Brown, could you tell us
6 one more time what exact wording is for Section D that you
7 wanted to see?

8 BOARD MEMBER BROWN: Okay. In that Section D,
9 "Any Board member may only take a field trip..." and then
10 add "with a party."

11 BOARD MEMBER RIE: So right after "trip" "with a
12 party"?

13 BOARD MEMBER BROWN: Yes. Which therefore would
14 not preclude any Board member from visiting a site on his
15 or her own.

16 The next one is page 3 of the next section. What
17 is that?

18 The Initial Statement of Reasons.

19 Are you there, Debbie?

20 DEPUTY ATTORNEY GENERAL SMITH: Yes.

21 BOARD MEMBER RIE: What page?

22 BOARD MEMBER BROWN: It's page 3 on the next
23 section, which is the Initial Statement of Reasons.

24 BOARD MEMBER RIE: I can't find it.

25 VICE-PRESIDENT HODGKINS: My pages are numbered

1 continuously all the way through.

2 SECRETARY DOHERTY: It's the whole next section.

3 PRESIDENT CARTER: No, it's very near the end of
4 the package, like only six pages back.

5 BOARD MEMBER RIE: Isn't there a page number at
6 the bottom?

7 SECRETARY DOHERTY: Yeah. And it's page 3.

8 PRESIDENT CARTER: Page 3.

9 DEPUTY ATTORNEY GENERAL SMITH: It's an entirely
10 separate document that's titled "Initial Statement of
11 reasons."

12 BOARD MEMBER RIE: Oh, okay.

13 BOARD MEMBER BROWN: Only 1, 2, 3 -- 4th
14 paragraph down, at the end of it. The second to the last
15 sentence starts out, "The amendment also states that the
16 disclosure shall occur prior to or at the same time that
17 the Board considers the matter that was the subject of the
18 communication. This is consistent with the statement in
19 AB 5 that in order for the communication to cease being an
20 ex parte communication, the communication should be made
21 part of the official record of proceedings."

22 My question to you is, what about after a permit
23 is granted?

24 DEPUTY ATTORNEY GENERAL SMITH: I'm not entirely
25 sure I understand --

1 BOARD MEMBER BROWN: Well, the issue -- after the
2 permit is granted, the issue is no longer before the
3 Board.

4 DEPUTY ATTORNEY GENERAL SMITH: Right. And that
5 is actually -- if you look at Section 5.1 at page 11 of
6 the other packet, subparagraph B, it does discuss when --
7 I believe it's in paragraph B -- it does discuss when
8 it no longer is under the Board's jurisdiction. And so
9 that would be after the time period for a reconsideration
10 to occur.

11 BOARD MEMBER BROWN: Yes. So my question is:
12 Does that need to be explained, that after the permit and
13 the time period has elapsed, that Board members are then
14 free to go ahead and continue?

15 DEPUTY ATTORNEY GENERAL SMITH: I can certainly
16 add some explanatory language to that. That definitely
17 makes sense.

18 BOARD MEMBER BROWN: Okay. That's all, Mr.
19 Chairman.

20 BOARD MEMBER RIE: Did you want to propose
21 specific wording so that we can consider that today?

22 BOARD MEMBER BROWN: No. Debbie can do that as
23 far as I'm concerned. She understands the question.

24 PRESIDENT CARTER: I guess the question is, not
25 knowing the language, is the Board prepared to take action

1 on this, unless we have some specific action?

2 DEPUTY ATTORNEY GENERAL SMITH: Mr. President, I
3 can clarify the -- I'm sorry. I don't mean to interrupt.
4 But the action today by the Board is not an official --
5 it's not a legally required vote. So if the Board is
6 comfortable with allowing the Attorney General's Office to
7 craft that language, then it can do so, just to clarify.

8 PRESIDENT CARTER: So the adoption by the Board
9 is going to occur 45 days hence, is that right?

10 DEPUTY ATTORNEY GENERAL SMITH: Correct.

11 PRESIDENT CARTER: Okay. Of the final language.

12 BOARD MEMBER RIE: So we're not voting today?

13 DEPUTY ATTORNEY GENERAL SMITH: Well, we do want
14 to get the Board's approval so that we are going -- we
15 know we're going down the right path and when we bring
16 them back. So I think it makes sense to get a vote of the
17 Board. But my point is that it's not a legally required
18 vote today.

19 LEGAL COUNSEL CAHILL: You know, I would suggest
20 you look on the top of page 12. It says, "After the Board
21 votes on an application and any opportunity for
22 reconsideration has expired, the matter is no longer a
23 matter under the Board's jurisdiction." I think that may
24 already cover your concern.

25 BOARD MEMBER BROWN: Ginny, I don't have a page

1 12.

2 SECRETARY DOHERTY: I've got a page 12.

3 PRESIDENT CARTER: It's the same one with "with a
4 party," at the top of that page.

5 LEGAL COUNSEL CAHILL: Right, it's the page that
6 you had your "with a party".

7 DEPUTY ATTORNEY GENERAL SMITH: And my
8 understanding of --

9 BOARD MEMBER BROWN: Oh, back on the --

10 LEGAL COUNSEL CAHILL: Right. So I think we're
11 already covering it. What is a matter under the Board's
12 jurisdiction? And that language indicates that once the
13 action's been taken, it's no longer before your
14 jurisdiction and therefore ex parte no longer applies. So
15 I think it's already there.

16 DEPUTY ATTORNEY GENERAL SMITH: But my
17 understanding of Board Member Brown's point is to add some
18 language in the initial statement of reasons explaining
19 that.

20 LEGAL COUNSEL CAHILL: Okay. But not in the
21 regulation itself. Okay.

22 BOARD MEMBER BROWN: I'm satisfied with Ms. Smith
23 addressing that, Mr. Chairman.

24 PRESIDENT CARTER: Okay. Any other questions,
25 comments?

1 BOARD MEMBER SUAREZ: Mr. President, if I may.

2 PRESIDENT CARTER: Ms. Suarez.

3 BOARD MEMBER SUAREZ: But going back to page 12,
4 Ms. Smith --

5 PRESIDENT CARTER: Which page 12.

6 BOARD MEMBER SUAREZ: Twelve of the actual
7 proposed regulation.

8 PRESIDENT CARTER: Okay.

9 BOARD MEMBER SUAREZ: We have sections F and G.
10 And I just wanted some sense of where this scheme --
11 reporting scheme was adopted from. Is this how other ex
12 parte rules read?

13 DEPUTY ATTORNEY GENERAL SMITH: Yes. I did
14 compare -- or I did use several other agencies'
15 regulations as a template for these, and mostly copied
16 from theirs. And the Integrated Waste Management Board is
17 one of them that I referred to as well as the State Water
18 Board. I do know for a fact that the Integrated Waste
19 Management Board has language similar to this.

20 BOARD MEMBER SUAREZ: So they report ex parte via
21 memo to the Executive Director?

22 DEPUTY ATTORNEY GENERAL SMITH: Correct.

23 BOARD MEMBER SUAREZ: And that's the only way
24 that it can be done?

25 DEPUTY ATTORNEY GENERAL SMITH: I don't have

1 those regulations in front of me. I don't know that
2 that's the only way, but I believe so. I believe that's
3 the way their regulations read.

4 If the Board has other suggestions for how to do
5 it, I can certainly revise the language.

6 BOARD MEMBER RIE: I don't know. It just seems
7 like an extra step we might forget.

8 BOARD MEMBER SUAREZ: Mr. Brown, maybe you could
9 provide -- when you were on the Water Board, when you
10 reported ex parte, did you do it my memorandum or did you
11 just bring it up during the actual hearing?

12 BOARD MEMBER BROWN: You could do both.

13 BOARD MEMBER SUAREZ: So you were flexible,
14 either through written communication or at the hearing
15 time?

16 BOARD MEMBER BROWN: Yes ma'am.

17 BOARD MEMBER SUAREZ: Thank you.

18 DEPUTY ATTORNEY GENERAL SMITH: It does seem to
19 read that it could only be by memorandum. Legally
20 speaking, it would be sufficient to bring it up at the
21 Board meeting, for example, orally.

22 BOARD MEMBER SUAREZ: Well, I would suggest some
23 flexibility might be in order.

24 PRESIDENT CARTER: And that's kind of the
25 practice we've been following for the last 11 months,

1 where it's either communicated to staff and made part of
2 the record. Or, more often, it was just disclosed during
3 the Board meeting and entered into the record.

4 DEPUTY ATTORNEY GENERAL SMITH: I think that
5 makes a lot of sense, and I could certainly add language
6 stating that that's an option, either to bring it up
7 orally at the Board meeting or to provide a written
8 memorandum.

9 BOARD MEMBER SUAREZ: Thank you.

10 PRESIDENT CARTER: Okay. Go ahead.
11 Teri.

12 BOARD MEMBER RIE: On page 28 of the regulations,
13 Section G, I don't remember seeing that the last three
14 times we discussed this regulations. Was that added
15 recently?

16 DEPUTY ATTORNEY GENERAL SMITH: Yes, that was.
17 And the section you're referring to is talking about --
18 gives the Board -- as an explicit matter, that the Board
19 can deny a permit application if the U.S. Army Corps of
20 Engineers either recommends denial of a project over which
21 they have jurisdiction or they have not provided their
22 recommendation. And because of the fact that that
23 practice is fairly recent, we thought it would be a good
24 idea to make that explicit. Although the Board has that
25 ability now, it's not explicit in the regulations.

1 BOARD MEMBER RIE: Well, I think considering that
2 we haven't brought this before the stakeholder group and
3 it hasn't been brought up at any of the previous hearings,
4 I would suggest that we delete it for now and consider it
5 with the Tier 2 revisions to the regulations.

6 DEPUTY ATTORNEY GENERAL SMITH: If that's the
7 preference of the Board, certainly.

8 BOARD MEMBER RIE: Do you guys mind if we
9 consider this with Tier 2?

10 PRESIDENT CARTER: Are there any objections?

11 BOARD MEMBER RIE: And we have other
12 Corps-specific items that we're going to be bringing up
13 with Tier 2. So perhaps we can consider all the Corps
14 issues together.

15 BOARD MEMBER SUAREZ: Mr. President?

16 PRESIDENT CARTER: Ms. Suarez:

17 BOARD MEMBER SUAREZ: Yes. This is an item that
18 Ms. Smith had brought up to my attention a couple of weeks
19 ago. And when she and I discussed it, it makes sense to
20 me till we get to the point where the public in general
21 understands and has an opportunity to see the things that
22 may end up with a denial. So in that sense, as an
23 information item I think it's a good thing to list. But I
24 do agree with Ms. Rie that perhaps we need -- maybe we
25 need a little -- an opportunity to get some input from

1 stakeholders before we move forward with this one.

2 Because, as I think about it, we really don't know what
3 ramifications of that -- of including that. So it might
4 be worth baking a little more.

5 BOARD MEMBER RIE: You're on the Committee,
6 right?

7 BOARD MEMBER SUAREZ: I was part of some of the
8 discussions, yes.

9 BOARD MEMBER RIE: Are you okay if we move this
10 item to Tier 2?

11 BOARD MEMBER SUAREZ: I think so. I believe I'd
12 be interested to hearing from some stakeholders before we
13 moved on.

14 PRESIDENT CARTER: Okay. Hearing no objections,
15 I think -- let's go ahead and proceed that way then.

16 Any other comments?

17 Mr. Hodgkins, did you have something?

18 VICE-PRESIDENT HODGKINS: I have a couple.

19 Page 20, paragraph K, which is an added
20 paragraph, just on my copy stops with the letters s-u. It
21 looks like there was an omission.

22 What does it say?

23 DEPUTY ATTORNEY GENERAL SMITH: That is
24 not -- that should end at the end of the first sentence.
25 So that's a typographical error, and I apologize for that.

1 BOARD MEMBER SUAREZ: So strike out, "An
2 amendment shall be..."

3 VICE-PRESIDENT HODGKINS: So strike out from "An"
4 forward.

5 DEPUTY ATTORNEY GENERAL SMITH: As you can see,
6 there was initially an attempt to define "minor." But it
7 was decided that wasn't necessary.

8 VICE-PRESIDENT HODGKINS: Okay. Then I have a
9 question on page 23. Paragraph I is discussing the
10 actions of the Board in terms of affecting the written
11 findings of fact, I think is the term used here. And the
12 way this provision is written, it would appear to me that
13 it could be interpreted as saying that if the Board
14 decided to revise the findings of fact or resolutions
15 showing the findings of fact, they can't do it at the
16 meeting, they have to bring it back in writing.

17 We routinely have made changes at the Board
18 meeting. And it seems to me that this could be amended to
19 simply indicate we could make changes in the written
20 conclusions at the Board meeting.

21 DEPUTY ATTORNEY GENERAL SMITH: My response to
22 that would be that it does say "may" direct. So it is not
23 mandatory. It does give the Board a clear option for
24 bringing it back and a clear procedure for bringing it
25 back if it's deemed necessary to do so. And in some cases

1 after an evidentiary hearing you may find that that is
2 necessary to make it clear on the record what exactly was
3 decided, so that makes it more clear for a potential court
4 challenge.

5 VICE-PRESIDENT HODGKINS: That's fine.

6 BOARD MEMBER RIE: Was this added recently?

7 DEPUTY ATTORNEY GENERAL SMITH: No. I believe
8 this has been in the language all along.

9 BOARD MEMBER RIE: It's been there the whole
10 time?

11 DEPUTY ATTORNEY GENERAL SMITH: Um-hmm.

12 BOARD MEMBER RIE: Okay.

13 VICE-PRESIDENT HODGKINS: I'm fine with those.
14 Those are the only two that I felt were worth discussion
15 here.

16 PRESIDENT CARTER: Any other comments?

17 Okay. Then do we -- we don't have a resolution.

18 I guess we want to direct staff to forward the proposed
19 amendments to the Office of Administrative Law for
20 publication.

21 What's the pleasure of the Board?

22 DEPUTY ATTORNEY GENERAL SMITH: With the
23 amendments or suggestions made.

24 PRESIDENT CARTER: Right.

25 BOARD MEMBER SUAREZ: Well, I first would like to

1 thank again Ms. Smith and the staff for the work they did
2 on this. Getting Tier 1 is important especially on our
3 first year as a new board. So I would suggest we move on
4 and recommend the staff to move on with them and encourage
5 the Board to support them.

6 PRESIDENT CARTER: Is that a motion?

7 BOARD MEMBER SUAREZ: I guess so.

8 PRESIDENT CARTER: Is there a second?

9 VICE-PRESIDENT HODGKINS: I'll second.

10 PRESIDENT CARTER: Okay. We have a motion and a
11 second.

12 Any further discussion?

13 BOARD MEMBER RIE: Did that include the
14 amendments?

15 PRESIDENT CARTER: That includes the amendments.

16 BOARD MEMBER RIE: Okay. Ms. Smith, are you
17 clear with all the proposed modifications and --

18 DEPUTY ATTORNEY GENERAL SMITH: Yes, I am.

19 BOARD MEMBER RIE: -- deletions?

20 DEPUTY ATTORNEY GENERAL SMITH: Um-hmm.

21 BOARD MEMBER RIE: Okay.

22 PRESIDENT CARTER: Okay. Mr. Punia, would you
23 call the roll, please.

24 EXECUTIVE OFFICER PUNIA: Board Member John
25 Brown?

1 BOARD MEMBER BROWN: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Maureen
3 Doherty?

4 SECRETARY DOHERTY: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member Emma
6 Suarez?

7 BOARD MEMBER SUAREZ: Aye.

8 EXECUTIVE OFFICER PUNIA: Board Member Butch
9 Hodgkins?

10 VICE-PRESIDENT HODGKINS: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

12 BOARD MEMBER RIE: Aye.

13 EXECUTIVE OFFICER PUNIA: Board President Ben
14 Carter?

15 PRESIDENT CARTER: Aye.

16 And thank you all, your whole team, for your
17 efforts. Appreciate it.

18 DEPUTY ATTORNEY GENERAL SMITH: Thank you very
19 much.

20 BOARD MEMBER RIE: And thank you, Ms. Suarez.

21 SECRETARY DOHERTY: Debbie, I would also like to
22 say that it took me forever to go through this and
23 underline and outline. And I can't imagine the amount of
24 time it took you and your group.

25 DEPUTY ATTORNEY GENERAL SMITH: It's a lot of

1 work. But thank you very much.

2 BOARD MEMBER BROWN: Nice job.

3 PRESIDENT CARTER: All right. Ladies and
4 gentlemen, we move on to Item 10. This is a discussion of
5 the local project cooperation agreements involving joint
6 powers agencies. To consider whether the Board will
7 require assurances regarding operation and maintenance and
8 indemnity from members of JPAs as well as from the joint
9 powers agency itself.

10 Ms. Cahill.

11 LEGAL COUNSEL CAHILL: Yes. We're waiting for
12 the PowerPoint to be loaded.

13 Dan is there any way I can operate that from up
14 here or --

15 SUPERVISING ENGINEER FUA: I'll operate it here.

16 (Thereupon an overhead presentation was
17 Presented as follows.)

18 LEGAL COUNSEL CAHILL: Okay. This is Item 10 on
19 the agenda relating to assurance agreements involving
20 joint powers agencies.

21 VICE-PRESIDENT HODGKINS: When is the appropriate
22 time to report an ex parte communication?

23 LEGAL COUNSEL CAHILL: Now would be a fine time.

24 VICE-PRESIDENT HODGKINS: Okay. I have had
25 conversations -- and I'm not sure the item was on the

1 agenda yet, but I certainly knew it was coming up -- with
2 Mr. Buer of SAFCA and with Scott of Three Rivers about
3 this issue.

4 With respect to my conversation with Scott, I
5 think it was -- I don't recall that he said anything that
6 influenced my own opinion here on this or that I even
7 remember about this. I think we tried to keep it not a
8 part of the discussion. Our meeting was on another
9 matter.

10 I had a meeting with Mr. Buer, just trying to
11 understand kind of where SAFCA is in general in their
12 plan, and the subject came up.

13 I need to report that Mr. Buer suggested as an
14 alternative to doing anything that would try to hold local
15 governments -- to make local governments participate in
16 the process, it might be appropriate to ask instead that
17 local governments require that their constituents within
18 the floodplain have flood insurance. And I have to say
19 that I thought that was a good idea. And so I think, as
20 you will hear, he at least influenced my thinking on this
21 matter.

22 And I hope that's adequate.

23 LEGAL COUNSEL CAHILL: Yes, thank you. It's not
24 even clear that this is one that comes under ex parte if
25 it's general policy. But in fact, because there are

1 specific entities whose agreements will be affected, it
2 was cautious to report it.

3 The issue today for the Board is to consider
4 whether the Board will require assurances regarding
5 operation and maintenance and indemnity from the members
6 of a joint powers agency as well as from the joint powers
7 agency itself.

8 --o0o--

9 LEGAL COUNSEL CAHILL: Let's start with the idea
10 of the local agreements. I'm calling them here local
11 project cooperation agreements, LPCAs. They actually have
12 different names at different times. But for convenience
13 we're going to call them LPCAs.

14 And the background here is that the United States
15 requires the state through the Board to offer assurances
16 that it will maintain project facilities and will
17 indemnify the United States. And then state law requires
18 the Board to pass these obligations to another public
19 agency.

20 And the purpose of the local cooperation
21 agreements is to ensure that an entity other than the
22 Board will maintain the project and provide the necessary
23 indemnities to the state and to the United States.

24 --o0o--

25 LEGAL COUNSEL CAHILL: A bit of background. I'm

1 sure all of you know this already, but we'll do it briefly
2 on what a joint powers agency is. The Government Code
3 provides that two or more public agencies may enter an
4 agreement to jointly exercise any power that is common to
5 the contracting agencies. And sometimes they just have an
6 agreement, and they continue each to operate. But
7 sometimes they actually form a new agency. The joint
8 powers agreement among the member agencies creates a new
9 agency. An examples would be SAFCA and TRLIA and West
10 SAFCA. And state law says that the debts, liabilities and
11 obligations of the joint powers agency will be those of
12 the members unless the agreement specifies otherwise; and
13 the agreements almost always specify otherwise. So the
14 individual members form the joint powers agency. And by
15 their agreement they say none of its debts or obligations
16 will be their own.

17 Okay. So next slide.

18 --o0o--

19 LEGAL COUNSEL CAHILL: And so if the state wants
20 to have -- well, I'll get to that.

21 One other Government Code section that's relative
22 here is Government Code Section 895.2. It's an exception
23 to that rule that by agreement they can -- they can
24 prevent themselves from being liable for the JPA's
25 obligations. Where a joint powers agency or one of its

1 members commits a negligent or wrongful act or omission in
2 performance of the agreement, then all the member agencies
3 will be liable no matter what their agreement says.

4 This section doesn't apply to contractual
5 obligations though. And it probably doesn't apply to
6 inverse condemnation. And some of the recent flood cases
7 have actually found liability for the state on an inverse
8 condemnation grounds. And so I don't think that
9 Government Code Section 895.2 would pass through that
10 liability to the members. At least I wouldn't want to
11 count on it.

12 BOARD MEMBER SUAREZ: Ms. Cahill? Excuse me.

13 Do we have -- is there any case on point on that
14 issue of the inverse condemnation?

15 LEGAL COUNSEL CAHILL: Well, the Paterno case
16 actually was -- the holding in Paterno was based on
17 inverse condemnation and not -- and it was very clear.
18 They said, "We're not basing this on negligence. We're
19 basing it on inverse condemnation." And it's a different
20 analysis.

21 BOARD MEMBER SUAREZ: But that wasn't a joint
22 power agreement.

23 LEGAL COUNSEL CAHILL: It wasn't a joint power
24 agreement. I don't think there have been any joint powers
25 cases litigated.

1 BOARD MEMBER SUAREZ: So we don't know the answer
2 to that question whether this tort obligation -- that this
3 statutory language that seems to indicate that you can
4 pierce through the JPA to find liability, whether it
5 would --

6 LEGAL COUNSEL CAHILL: There's no case directly
7 on point.

8 --o0o--

9 LEGAL COUNSEL CAHILL: Okay. So the question
10 really is, in the past the Board has sometimes required
11 local agreements from the joint powers agency only, and in
12 some cases it has required local agreements from the joint
13 powers agency and from its individual members.

14 And there are a number of arguments in favor of
15 requiring the member agencies to sign the LPCA as well.
16 And the first is that the joint powers agency doesn't have
17 the financial resources to carry out its obligations under
18 the LPCA, both in the short term and in the long term.
19 Its agreement to do so offers the state no real assurance
20 that those obligations will be met. Most of these
21 agreements say that the agreement can be amended by
22 unanimous agreement of the members. They could at some
23 point agree to dissolve it. And if only the JPA was on
24 the agreement, there would be no agency left -- no local
25 agency picking up those requirements.

1 And so that's really the second point here. If
2 the joint powers agency were to go out of existence, there
3 would no longer be any local agency obligated to provide
4 the O&M in the indemnity.

5 And it's often the member agencies that are the
6 proponents and the beneficiaries of the project. They
7 form the JPA to carry out the project. They're really the
8 moving propounding parties. And so it doesn't seem unfair
9 to ask them also to take responsibility for this project,
10 which really is a joint project.

11 BOARD MEMBER RIE: Ms. Cahill?

12 I was just curious. Are we having a problem with
13 a specific JPA that they don't have the financial
14 resources to do maintenance?

15 LEGAL COUNSEL CAHILL: There have been.
16 Certainly in the last year, when we did earlier agreements
17 with Three Rivers Levee Improvement Association, at that
18 time the Board thought that it was wise to include the
19 member agencies. It's a relatively recently formed JPA.
20 Its resources may not be sufficient to guaranty or to make
21 you comfortable in the long term that it will be there and
22 able to meet all those obligations.

23 BOARD MEMBER RIE: But have we had a problem
24 where a JPA was unable to perform maintenance?

25 LEGAL COUNSEL CAHILL: You know, you haven't had

1 enough track record, I don't think. You know, you haven't
2 been doing this long enough.

3 I think it wasn't such a big issue with the old
4 standard Corps of Engineers format projects. But what we
5 have here now are these EIP projects coming up where the
6 real proponents are the JPAs and the member agencies and
7 they're doing the design and they're doing the
8 construction. And so in that case, it's more reasonable
9 to require them all to sign on, than in the standard mode
10 where it was the Corps doing the design, the Corps doing
11 the construction. I mean there's -- they really are the
12 powers behind the projects.

13 But, no, we -- I --

14 BOARD MEMBER RIE: I'm just trying to get at why
15 are we discussing this?

16 LEGAL COUNSEL CAHILL: We're discussing it
17 because you have a number of these agreements coming up,
18 including your next agenda item. And so the last time the
19 Three Rivers agreement came up, member Hodgkins said, "I'd
20 like us to talk about this as a policy matter before we
21 approve any more of these so that we figure out what we as
22 a board want to do." So that's why we're having this
23 discussion today.

24 BOARD MEMBER RIE: Okay.

25 SECRETARY DOHERTY: May I ask you another

1 question, please?

2 LEGAL COUNSEL CAHILL: Sure.

3 SECRETARY DOHERTY: If Three Rivers -- the plan
4 is that Three Rivers will go away when the project is
5 complete and 874 takes over -- Reclamation District 874.
6 So if 874 only has a lawn mower, as Mr. Eres suggests, and
7 nothing else to back it up, and there's a problem, you're
8 saying now that -- who's going to be responsible?

9 LEGAL COUNSEL CAHILL: Yes. I mean that's the
10 issue. Would it be just 874? Would Yuba County -- you
11 know, if you have Yuba County also sign the agreement, you
12 have another entity there and responsible. It makes it
13 more likely there will be a party still there available to
14 meet these obligations.

15 BOARD MEMBER SUAREZ: I'm sorry. Responsible for
16 what?

17 LEGAL COUNSEL CAHILL: For providing the
18 indemnities to the state and providing --

19 BOARD MEMBER SUAREZ: What's the injury?

20 LEGAL COUNSEL CAHILL: Pardon me?

21 BOARD MEMBER SUAREZ: What's the injury?

22 LEGAL COUNSEL CAHILL: It would be if there were
23 flood damage, tort damage, someone gets hurt on the levee.
24 I mean --

25 BOARD MEMBER SUAREZ: But the code section

1 already covers that.

2 LEGAL COUNSEL CAHILL: It covers tort liability,
3 yes. So someone getting hurt on the levee probably would
4 be covered. But flood damage, like Paterno, probably
5 isn't.

6 BOARD MEMBER SUAREZ: But we don't know that,
7 correct?

8 LEGAL COUNSEL CAHILL: We don't know it either.
9 Well, Paterno itself says we are not talking negligence.
10 This code section's definitely talking about wrongful and
11 negligent acts, which is your negligence cause of action,
12 not your inverse condemnation cause of action. So as a
13 legal matter, I would offer you the opinion that inverse
14 liability probably is not covered by that Government Code
15 section.

16 VICE-PRESIDENT HODGKINS: Not being an attorney,
17 it's important to me at least to understand what a tort
18 is. Okay? For instance, there is maintenance being
19 performed by the local maintaining agency and in the
20 process of doing that, there's an accident and somebody is
21 injured. I guess my first question would be: Is it
22 possible that the injured party can reach past the levee
23 that -- the agency that was maintaining this to the state,
24 who helped to construct it, and make us responsible for
25 whatever damages might come out of that?

1 And in a similar matter, somebody is simply
2 walking down the top of the levee, steps off and injures
3 themselves because -- I don't know why. You know, those
4 things you don't always know why. Can a damages claim,
5 again for whatever injury that might be associated with
6 that, be proposed in a manner where it might reach past
7 784 or American River or RD 1000 to the state?

8 LEGAL COUNSEL CAHILL: Anyone can always sue
9 anyone. And so it's quite likely that if someone gets
10 injured, they will sue everybody. And so the state would
11 be named as a party, even though ultimately a court might
12 find it not to be liable.

13 When the local agencies had agreed to indemnify
14 the state, they agreed to hold us harmless. And so if it
15 passed on through to the state, they would nonetheless
16 pick it up on your behalf. This indemnification means
17 they will protect us. They would probably even offer the
18 defense so that it never gets to be against the state.
19 And if it were against the state, they would hold you
20 harmless from it. So, I think that's the answer to your
21 question.

22 VICE-PRESIDENT HODGKINS: Well, what I'm trying
23 to understand for myself here is -- you know, I know that
24 SAFCA was created to go away. It was a financing agency.
25 And Three Rivers is the same way. So I'm trying to

1 understand, if they provide an indemnification here and
2 then they subsequently go away and this type of a claim is
3 filed after they've have gone away -- and understand, you
4 have an engineer's very limited understanding of joint and
5 several liability and how all of that works -- but they're
6 not here, so the indemnification is meaningless, or if
7 they don't have any money, then the indemnification is
8 meaningless, is the state then potentially liable?

9 LEGAL COUNSEL CAHILL: I think what we're trying
10 to do here is to have the member agencies agree to
11 indemnify the state so that in exactly the events you've
12 just described, there still will be a local agency there
13 to indemnify the State.

14 VICE-PRESIDENT HODGKINS: Okay. All right.

15 LEGAL COUNSEL CAHILL: There are arguments
16 against it. And, you know, I'm purporting to make
17 arguments. I'm sure the -- the opponents have arguments
18 of their own. But if we go to the next slide, some of
19 them that I anticipate are:

20 --o0o--

21 LEGAL COUNSEL CAHILL: The individual members
22 also have limited resources. Even if you are concerned
23 that a particular joint powers authority doesn't have much
24 in the way of resources, putting on a reclamation district
25 in a city or county might not give you much real

1 protection.

2 Second, is that the individual members of the
3 joint powers agency, that is, the individual agencies who
4 are members, often don't, each of them, have sufficient
5 votes to control the actions of the Board. So they're not
6 really controlling designing and construction. It really
7 is the JPA's project. The individual members aren't
8 controlling it, so they shouldn't have to provide the
9 indemnities.

10 And a third one which I think could be handled is
11 in agencies with a large geographic reach, a particular
12 project in one area may not benefit members located in
13 another area.

14 And one of the options you could do here was you
15 could decide to have some members sign on. But they would
16 be the members that were benefited by the particular
17 project or some variant of that.

18 If we want to go on.

19 At the end I'll talk about the flood insurance
20 issue.

21 --o0o--

22 LEGAL COUNSEL CAHILL: You've been told in the
23 past that it was unfair to require some agencies to
24 have -- for the Board to require the members to sign on
25 for some agencies and not for others. So you have three

1 options. You can decide to always have the member
2 agencies sign on, you can decide to never have the member
3 agencies sign on, or you can look at it in a case-by-case
4 basis.

5 And I believe you can look on it as a
6 case-by-case basis. I think the decision whether to
7 require members of a particular JPA to execute the local
8 agreement will turn on the likely ability of that JPA
9 itself to provide the required maintenance in the long
10 term and to provide the indemnity in the long term if
11 required in the future.

12 One other option is, if you don't have the member
13 sign on to be immediately -- to immediately undertake the
14 indemnity of the O&M, is to nonetheless have them sign on
15 and say they'll do it if the JPA goes out of existence.
16 So that as long as the JPA is there, it's the entity. But
17 if it were to cease to be, those members would take it
18 over. And then in that case they would also have to sign
19 the agreement. But instead of having that obligation
20 immediately, they would have it in the event the JPA went
21 away.

22 But I don't think you need to treat all JPAs the
23 same. I would analogize this to credit worthiness. A
24 bank doesn't lend money to all-comers on equal terms.
25 They analyze how credit worthy a particular borrower is.

1 And I think you're able to do the same thing.

2 --o0o--

3 LEGAL COUNSEL CAHILL: And if we could look -- I
4 know an argument may be made that the Jones Bill handles
5 this, that to the extent that some of the joint powers
6 agency members are cities or counties, that somehow the
7 Jones Bill precludes them from any liability for flood
8 damage.

9 This bill was intended to preserve local land use
10 authority, while minimizing the state's exposure to flood
11 liability. And it provides that cities and counties will
12 be -- land use agencies will be liable for flood damages
13 resulting from unreasonable local land use decisions which
14 place additional development in harm's way behind known
15 inadequate levees.

16 And they won't be if the flood is -- there are a
17 number of exceptions, a number of reasons when they won't
18 be liable.

19 In this case, you're not trying to hold local
20 entities liable because of land use decisions. Here the
21 Board would require a city or county member of a JPA to
22 sign the local assurance not because of the land use
23 decisions but because it's a project proponent or it's the
24 major source of funding or it's the beneficiary of the
25 project. It's a different rationale. I don't think the

1 Jones Bill intended to address those circumstances.

2 So I don't think it would preclude you -- I
3 didn't mention early on, the Joint Powers Act itself says
4 that the agreement could determine if the debts and
5 obligations of the JPA are those of the members. But it
6 also provides that the members can assume the debts and
7 obligations of the JPA. So nothing precludes them from
8 doing it.

9 And then I think the last slide is just the
10 conclusion.

11 --o0o--

12 LEGAL COUNSEL CAHILL: The Board may make a
13 policy decision regarding whether to require members of a
14 joint powers agency to execute an assurance agreement as a
15 condition of the permit to the JPA.

16 For example, in the TRLIA permit that's coming up
17 in the next item, there's actually a permit condition that
18 they're not to do Phase B work until they have an
19 assurance agreement satisfactory to the Board among the
20 joint powers agency and its members.

21 And the Board can take into account the
22 circumstances of each case.

23 And I think I'll wade into the flood insurance
24 issue. Maybe I should wait till the next presentation.
25 But as I've read the Paterno case, the state can be sued

1 even if the homeowners have flood insurance, because the
2 Court said that doesn't keep the state from being liable.
3 It just gives the insurance company the right. You know,
4 the insurance company pays the landowner and then the
5 insurance company tries to do the recovery. So it doesn't
6 protect the state. And I think local landowners would
7 object vociferously to having to pay flood insurance after
8 they've paid to put new levees in.

9 So it's certainly a possibility as one of the
10 things in the mix that you can consider. But I doubt that
11 it's the solution.

12 And so then I understand that Scott Shapiro is
13 going to make a presentation on behalf of a number of the
14 JPAs. And then I think the President probably has cards
15 for individual -- other entities to speak.

16 Do you want to ask me questions before you hear
17 from them? I think it might be better to get both
18 presentations and then --

19 PRESIDENT CARTER: Let's hear from Mr. Shapiro
20 and the public, and then we can ask questions of whomever.

21 LEGAL COUNSEL CAHILL: I would like to note too
22 that Ward Tabor of Department of Water Resources is here
23 from their legal staff. And he's also given this some
24 thought. So it could be at some point it would be
25 appropriate to ask him to contribute as well.

1 PRESIDENT CARTER: Thank you.

2 Mr. Shapiro.

3 MR. SHAPIRO: Good morning, President Carter,
4 members of the Board. Thank you for giving me some time
5 this morning to address you.

6 I'm speaking this morning on behalf of the
7 California Central Valley Flood Control Association, which
8 took a lead role in trying to coordinate responses from
9 local agencies to this issue to try to make this more
10 efficient.

11 I'm grateful to you, President Carter, and to Mr.
12 Punia for giving me the time to try to do this. And per
13 your request, I have spoken with the agencies that also
14 want to offer remarks at the end of my remarks. And
15 they've agreed to keep their remarks brief.

16 I had calculated, there's actually 25 agencies
17 between the JPAs and the local members that have an
18 interest in this. And of those, I think we've got it down
19 to 9 that want to offer brief remarks.

20 After I speak, Mr. Buer will be speaking on
21 behalf of SAFCA, Janelle Gray with the Sacramento City
22 Treasurer's Office - and I'll give you this list,
23 President Carter - Mr. Paul Hight with the Sacramento
24 County Risk Management Office, Ron Erickson with Sutter
25 County, Paul Devereux with RD 1000, Brian Holloway with

1 the American River Flood Control District, Ken Ruzich with
2 RD 900, and Jim Giottonini with the City of Stockton.

3 And hopefully I won't say things that will make
4 the other 16 jump up and want to say something too.

5 I think Ginny's presentation was great, and it
6 really does a good job of summarizing the issue. And I'll
7 try to be very brief in the introductory comments that
8 I've put into my presentation to provide context.

9 (Thereupon an overhead presentation was
10 Presented as follows.)

11 MR. SHAPIRO: I do have one slight disagreement
12 on what the issue is. I phrased the issue a little
13 differently:

14 "When granting a permit to a joint powers agency,
15 should the Board make it a condition of the permit that
16 the member agencies of the joint powers agency must
17 indemnify the Board for any liability that may arise from
18 the facilities that constitute the project."

19 And the distinction between the two issues we've
20 raised is, in Ginny's statement of the issues she's also
21 included O&M as an issue. And I'm proposing to take O&M
22 off the table, because the compromise position that the
23 association is presenting today in coordination with the
24 five JPAs that I represent is that there will be a
25 requirement of O&M indemnity and O&M performance by the

1 appropriate local agency. So we're not saying only the
2 JPA should be at the table. We're saying the JPA should
3 be at the table and the O&M agencies for things within
4 their control, which is operation and maintenance of the
5 levees.

6 So that's the only distinction between the two
7 issues. Otherwise I think she very correctly stated the
8 indemnity issue.

9 --o0o--

10 MR. SHAPIRO: So I thought, just as she was kind
11 enough to define what a JPA is, it's probably worth my
12 offering the definition of what indemnity is.

13 It's an agreement whereby one party agrees to
14 secure another against an anticipated loss or damage.
15 Interestingly, it only shifts the risk. It never lessens
16 or reduces the risk. It doesn't remove liability. It
17 simply says who's stuck with the liability.

18 And I think it's important as we go through
19 this - and I think you'll hear some of this in Mr. Buer's
20 remarks today - that we need to find ways of reducing the
21 liability. And I think the insurance issue that Member
22 Hodgkins raised is a great example of that.

23 Levee improvements, the ones that my clients have
24 and we come before you on month after month, they're all
25 designed to lessen liability. Three Rivers started with

1 10-year level of protection. And soon we'll have 200-year
2 level of protection. So \$360 million later we've reduced
3 the level of liability possible by strengthening the
4 levee. And we like that focus rather than the shifting
5 focus.

6 And the State Plan of Flood Control that Steve
7 Bradley spoke to you about this morning and the follow-up
8 Central Valley Flood Protection Plan is another way that
9 that flood risk is reduced instead of shifted.

10 --o0o--

11 MR. SHAPIRO: So, conforming Ginny's remarks, the
12 background is, as she said, that your permits require
13 indemnity from the applicant, the cooperation agreements
14 require indemnity from the local party that's partnering
15 with the state. But prior to 2004, the state had never
16 sought indemnification from a JPA member. And prior to
17 2004, there were permits issued to the Sacramento Area
18 Flood Control Agency, to West Sacramento Area Flood
19 Control Agency, to the San Joaquin Area Flood Control
20 Agency, and to Three Rivers Levee Improvement Authority.
21 In fact, four of the five JPAs -- the only one, I'm not
22 aware of the history on Sutter Butte because it was only
23 formed in the last year -- but the other four are all
24 entities that had permits and this requirement never
25 existed.

1 --o0o--

2 MR. SHAPIRO: In 2004, the Board then sitting
3 issued a permit to Three Rivers which did require
4 indemnification from the member agencies. And those were
5 Yuba County and Rd 784. And those two entities made the
6 case to you that it was an illegal requirement, but the
7 Board still required it.

8 And the two arguments articulated at the time --
9 and I've gone back and I've read the transcripts and I've
10 talked to Bill Edgar, who was one of the main articulators
11 of this -- were that Three Rivers was temporary and,
12 secondly, that the Board was requiring the indemnification
13 in order to affect the behavior of Yuba County in issuing
14 building permits in a floodplain. It was specifically
15 and -- it was specifically articulating that desire to try
16 to impose some sort of development control.

17 --o0o--

18 MR. SHAPIRO: Three Rivers and its member
19 agencies ultimately agreed to provide the indemnification.
20 They did not want to take the year it was going to take to
21 litigate the issue or legislate the issue. They thought
22 it was important to get started. And, indeed, now, you
23 know, \$300 million into this project, you can see that in
24 some ways that was the right choice for providing flood
25 protection for the area.

1 Three Rivers also agreed at the time to accept
2 this because the Reclamation Board, as you were called
3 then, did state that it would dole out this requirement
4 even-handedly, that all other JPAs would have to do this
5 as well, that they weren't being singled out.

6 But since that time the Board has not included
7 this requirement in permits issued to any other JPAs.
8 And, in fact, it's only included it in some of the Three
9 Rivers permits. It's been applied inconsistently.

10 --o0o--

11 MR. SHAPIRO: Ginny talked about AB 70 in 2007,
12 so I'm not going to take the time other than to say I
13 agree with her. It was designed to address liability
14 attributed to cities and counties arising out of approval
15 of development.

16 --o0o--

17 MR. SHAPIRO: So we come back to the issue: When
18 you grant a permit, what should happen?

19 --o0o--

20 MR. SHAPIRO: In my view, there's really five
21 different reasons you might seek indemnity or five
22 different types of liability that might arise:

23 There's design liability. Someone designs the
24 project. The design was faulty. The levee fails.
25 Liability arises.

1 Construction liability. The design was fine, but
2 it wasn't constructed properly.

3 You might have an operation and maintenance
4 liability. There were allegations that were not
5 substantiated against RD 784 in Paterno that it improperly
6 operated and maintained the levee. The Court said, "No
7 that's not the case. That wasn't why it failed." But
8 there could be a circumstance where operation and
9 maintenance was not proper and the levee fails.

10 You have this development liability issue that
11 we've talked about in the context of AB 70.

12 And then what I really think we end up talking
13 about for most of this discussion is this "shift the pain"
14 concept, the idea that the state is saying, "Hey, we're
15 the regulating agency here. They're not our levees. You
16 know, we don't get benefit out of them." Both of those
17 statements I disagree with, but we'll come back to. "And,
18 therefore, we want to shift this potential liability to
19 other people. We don't want to be stuck with another \$500
20 million judgment." And so I think that's the fifth kind.
21 And I think it's probably where most of the conversation
22 is going to center.

23 --oOo--

24 MR. SHAPIRO: Focusing on design liability first.
25 It's absolutely reasonable to seek indemnity for design

1 liability from the designer. In this case that's the JPA.
2 The local agencies are not designing the levees. No local
3 agency has a majority of votes on a JPA board member.
4 I've gone through and checked all five of them. They
5 don't -- the JPA members don't design. They don't control
6 the design. Frankly, they're pretty distant from the
7 design. And, therefore, it doesn't make sense to have
8 indemnity for design liability beyond that required from
9 the permittee, the JPA.

10 --o0o--

11 MR. SHAPIRO: A second example, the construction
12 liability, is really the same as the JPA for design. It
13 is reasonable to seek indemnity if there is a failure due
14 to construction. But the levees are constructed by the
15 JPA, not by the member agencies. They don't control the
16 project, they don't control the construction.

17 --o0o--

18 MR. SHAPIRO: Third we come to O&M liability.
19 O&M liability's different than the last two, because the
20 local agencies do provide the actual operation and
21 maintenance of the levee. It is reasonable to seek
22 indemnity for O&M liability from the entity that O&Ms the
23 project. That may be the JPA contractually. It is also
24 always in reality the reclamation district or American
25 River Flood Control District or whatever the local levee

1 maintaining agency is.

2 But the other members of the JPA do not control
3 the O&M. They have no role in it. They don't speak to
4 it. And it doesn't make sense to push O&M liability to an
5 entity that doesn't perform the O&M.

6 It's important sometimes to make sure that you
7 understand which entities perform the O&M. There's this
8 geographic distinction that Ms. Cahill points out in her
9 presentation.

10 --o0o--

11 MR. SHAPIRO: And here it is graphically. You
12 can see on the left I've highlighted in a fuchsia color
13 Reclamation District 1000's jurisdictional. And on the
14 right I've highlighted in a purplish color MA9, which is
15 State Maintenance Area 9, and American River Flood Control
16 District's approximate jurisdictional area. And they're
17 different, yet they're both within SAFCA.

18 And so if you were to say, "SAFCA and all of its
19 member agencies, I want indemnity from all of your member
20 agencies," you'd be asking RD 1000 to indemnify the state
21 for an O&M failure caused by American River Flood Control
22 District or by the state itself as it's operating the
23 levees in MA 9. So understanding the geography is
24 important.

25 That issue never came up in Three Rivers because

1 the geographic boundaries of Three Rivers and RD 784 are
2 the same. But all the other JPAs are different.

3 --o0o--

4 MR. SHAPIRO: Fourth we come to development
5 liability. Now, the Board originally and explicitly
6 sought to control the behavior of cities and counties by
7 obtaining indemnification. But AB 70 constitutes a state
8 policy on that issue on whether cities and counties should
9 be liable for adding damageable property to the
10 floodplain. And it is improper for the Board to adopt a
11 different policy from that set by the Legislature and the
12 Governor or to seek to undermine that policy.

13 --o0o--

14 MR. SHAPIRO: So, finally, we come to the fifth
15 one, the "shift the pain" liability, which again is really
16 where I think the focus is.

17 Is it appropriate to try to get others to take on
18 the pain for what might go wrong? You know, the JPAs and
19 their members have no obligation to fix the design and
20 construction of the system. They have every incentive to.
21 They are benefited from it. But legally they're not
22 required to.

23 In contrast, the state is contractually obligated
24 to make sure the system operates to the 1957 profile. And
25 you have local agencies that are coming forward because it

1 is in their benefit to the state to say, "We'll take the
2 lead. We'll design it. We'll raise local funds. We look
3 to the state for Proposition 1E funds. We're not shy in
4 doing that. But at the end of the day, we really don't
5 have a legal obligation to do this."

6 Yet the state seems to be punishing these
7 entities by trying to get the entities to indemnify the
8 state for what might happen.

9 And so you may have a situation where, if this
10 "shift the pain" policy is the policy of the Board, you
11 may start discouraging agencies from taking on projects.
12 They may say they're not willing to do so. "Now that
13 Steve Bradley and the State Plan of Flood Control and the
14 Central Valley Flood Protection Plan are in process, let's
15 let the state do it. Let's wait a few years and let the
16 state do it. And then we don't have to take the risk of
17 signing up for something that we're not legally
18 responsible for."

19 These local agencies have fewer resources. Are
20 they willing to accept the risk as compared to the state?
21 And is it fair to shift the risk to an agency that did not
22 do anything wrong, that hasn't acted in an improper way in
23 this?

24 --o0o--

25 MR. SHAPIRO: I'm going to go to the specific

1 advantages or arguments in favor of requiring member
2 agencies to sign these indemnities offered by Ginny and
3 try to address each of them in turn.

4 The first was that in order for these agreements
5 to be effective, there needs to be a willingness and an
6 ability to carry out the responsibilities. The JPA may
7 not have the resources. The JPA may not exist in the
8 future. And, therefore, we need to capture other
9 entities.

10 The reality is JPAs are typically more effective
11 than cities and counties in doing this kind of work.
12 They're able to focus on it. They're single-focus,
13 single-purpose agencies. And you can see the kind of
14 improvements that are getting done as a result.

15 This Board and, in particular, the State of
16 California has promoted a regional approach - have
17 regional entities come together, work together and propose
18 regional solutions to the Board. And the way to propose a
19 regional solution is by creating a joint powers agency to
20 work together, to get everybody who has an interest to
21 benefits to come together and work together. But if
22 you're going to seek indemnity from members of JPAs,
23 you're going against that very interest of promoting
24 regional solutions.

25 The second point was that if the JPAs were to go

1 out of existence, then no one would be around to provide
2 the O&M and the indemnity. Now, as I said earlier, the
3 O&M agencies are willing to sign up for the O&M. So
4 that's not the issue. The real issue is the indemnity.

5 You know, I think some examples maybe are in
6 order.

7 In Three Rivers' circumstance there was concern,
8 this perception that neither Three Rivers nor 784 has the
9 capability of doing this kind of work long term. Three
10 Rivers has issued builder bonds, which have a 30-year
11 term.

12 SAFCA recently did an assessment which has a
13 30-year term.

14 RD 784's current budget is about \$800,000.

15 And if an entity does cease to exist, state law
16 provides the solution. You create a state maintenance
17 area. The state creates it. And the state doesn't pay
18 the cost. It charges the cost to the landowners.

19 So it's not as though suddenly JPAs are going to
20 just be disappearing. I think we've all learned you don't
21 build a flood control project and go away. You build it.
22 Standards change, hydrology changes. You add to it.
23 SAFCA's been around for many years and it's going to be
24 around for many more years, as evidenced by this 30-year
25 assessment.

1 And the final point, the final argument in the
2 staff report was member agencies are often the proponents
3 and the beneficiaries of the project. That's absolutely
4 true.

5 But what about the other proponents, like the
6 state. And the state is clearly a proponent of these
7 projects. You're funding 50, 70 percent under 1E. You
8 want to reduce the chance of having state liability. But
9 the state is a proponent and is pushing to get these
10 projects done, but is now saying, "Wait a minute. We
11 won't indemnify. We want everyone else to indemnify us."

12 --o0o--

13 MR. SHAPIRO: Before I get to the conclusions, I
14 just wanted to respond briefly to a few of the other
15 points that were raised today that weren't necessarily in
16 here.

17 We come back to the statements on AB 70 that
18 liability should not be imposed for development
19 circumstances. But I think Ginny's slide talked about, in
20 this case actually, liability would be imposed because the
21 local agencies are the proponents, the beneficiaries, the
22 funders.

23 The State is a proponent, a beneficiary, and a
24 funder. The state is funding 70 percent of a lot of these
25 projects. It clearly is a beneficiary in keeping the

1 economy going. It clearly is a proponent in trying to
2 avoid its liability. Yet for some reason the state is
3 saying the local agencies are also, and therefore they
4 should be on the hook and they should be signed up.

5 And, finally, I want to address this issue of
6 treating JPAs differently. I actually agree with your
7 counsel's statement that if there are legitimate
8 differences and distinctions between JPAs, there may be
9 reasons to have different policies. But unfortunately
10 what we seem to be dealing with is a perception in
11 people's minds - and I'm aware of it, and I've been aware
12 of it for many years - that some JPAs are here long term
13 and they're doing great work and other JPAs are
14 fly-by-night and they're not getting anything done. And I
15 think what this Board has discovered over the last three,
16 four years is that the JPAs with the reputation of being
17 fly-by-night and not getting anything done, like Three
18 Rivers, actually have gotten a lot done, have managed to
19 raise, in cooperation with the state, with developers,
20 with local agencies, \$360 million, implementing one of the
21 first 200-year flood protection projects, on the lead on
22 EISs, on the lead on getting 408 approvals, issuing
23 builder bonds that will exist for 30 years. I mean these
24 are not entities that, as people think, are just here one
25 second and gone the next.

1 So if you're going to get into the business of
2 evaluating JPAs to determine whether their members should
3 indemnify or not, I would suggest you're actually going
4 down a slippery slope of needing to create staff or
5 committees that are going to start investigating funding
6 schemes, evaluating, you know, the credit worthiness of
7 one versus another. And I'm not really sure that's what
8 the issue is.

9 It seems to me the real issue is, do you have
10 someone who's going to O&M the project? And we're
11 offering a compromise where, yes, the local O&M agencies
12 will agree to O&M it and will indemnify for liability
13 arising out of O&M failure. Beyond that, these JPAs are
14 around, they're not disappearing.

15 So our proposal to you as a compromise position
16 is, yes, seek indemnity from the JPA, seek indemnity from
17 the JPA members that control O&M on O&M, and seek
18 indemnity from the JPA members that control -- excuse
19 me -- and seek obligations to perform O&M by those same
20 JPA members that do the O&M.

21 But we really shouldn't be dealing with
22 development ability. AB 70 dealt with that. And we
23 shouldn't be dealing with "shift the pain". It's just not
24 an appropriate state policy and it's not a policy which
25 promotes the kind of behavior you want to see from local

1 agencies.

2 So with that, unless you have specific questions
3 of me, I think Stein Buer's remarks, which are
4 generally -- which are obviously for SAFCA but generally
5 applicable to all five JPAs, may be the next logical place
6 to go.

7 PRESIDENT CARTER: Thank you, Mr. Shapiro.

8 Let's go ahead and hear from Mr. Buer.

9 MR. BUER: Good morning, Mr. President and
10 members of the Board. I'm Stein Buer, Executive Director
11 for the Sacramento Area Flood Control Agency. And I want
12 to open by saying I endorse and agree with everything that
13 Scott just said. And, accordingly, I'm going to try not
14 to repeat many of the arguments he made in the interests
15 of time on your other speakers.

16 I did provide you with a handout this morning,
17 which is the documentation of the action taken by the
18 SAFCA Board yesterday, wherein the board unanimously
19 adopted Resolution 08-127, endorsing the Policy Paper,
20 which is attached.

21 The Policy Paper is entitled "Policy Paper on Why
22 Cities and Counties Should Not Be Required to Indemnify
23 the State for Flood Damages." This builds upon the white
24 paper that SAFCA developed in 2006 to respond to the state
25 initiatives -- the state assessment of the flood situation

1 and ultimately to guide our dealings with the flurry of
2 legislative activity that's culminated in 2007 with a
3 series of bills that restructured the flood management and
4 risk management system for the state.

5 I would like to just address one part of that,
6 that when the bills were passed -- we've talked about AB
7 70. And there's one aspect of AB 70 that I don't believe
8 was fully discussed. And I'm surrounded by lawyers here,
9 so I'm kind of like a minnow swimming with sharks. But I
10 have one shark behind me. So Tim may jump up to defend me
11 if I take a misstep.

12 (Laughter.)

13 MR. BUER: But the point I wish to make is that
14 as AB 70 is written, it serves as an interim mechanism for
15 sharing the risk until such time as the State Plan of
16 Flood Protection is adopted. And if local agencies
17 conform with the requirements of the plan subsequently,
18 they're absolved of further risk. So in the interim
19 period, to the extent that local entities act
20 unreasonably, then there's a cause for action against
21 those entities.

22 We believe that the State Legislature gave
23 careful consideration to this issue in 2007 and came up
24 with a well-thought-out and balanced approach. That is,
25 there's a window of opportunity when local entities still

1 have not fully come to the point of living within the new
2 framework, which, as you know, will be phased in
3 over time, SB 5 being the primary vehicle for doing so.
4 But, in essence, that creates a framework wherein local
5 land use planning has to carefully consider flood risk in
6 its finding -- it's decisions, and will ultimately, we
7 believe, pinch off future growth in those kinds of
8 unfunded liabilities where local entities unreasonably
9 permit development.

10 So I think with that new framework in place, the
11 Board's action to require indemnity is unreasonable. And
12 the concept that you need to reach beyond an entity such
13 as SAFCA to the underlying jurisdictions because SAFCA may
14 not have sufficient resources I think is fundamentally
15 flawed. And the reason it's flawed is because the local
16 entities also do not have the resources to deal with the
17 kinds of liabilities we're talking about.

18 If you look at Sacramento, we have a damageable
19 property total in excess of \$50 billion. And in a major
20 flood event, if we have a catastrophic failure such as
21 Katrina, maybe at 50 percent damage, we're looking at an
22 unfunded liability of \$25 billion or so. And there's no
23 mechanism that the City of Sacramento, the County of
24 Sacramento would have to deal with that unfunded
25 liability. It simply is not possible. And this would

1 create a cloud over the local entities that there is no
2 way to deal with.

3 So when the state seeks to shift its liability to
4 the local entities in this way, it will have a very
5 chilling effect. I think, as Scott pointed out, there's a
6 very good chance that local entities will choose not to
7 participate in flood projects if that becomes a
8 requirement to do so. And that could have the effect of
9 stopping our joint cooperative efforts in moving forward
10 as quickly as possible with flood improvements. It could
11 stop us in our tracks. I think we have tremendous
12 momentum going, a great deal of cooperation between the
13 state and locals. And together we are making great
14 strides in reducing the liability that we jointly are
15 concerned about. So those structural improvements need to
16 go forward quickly.

17 The other point I wish to make and which has been
18 made repeatedly by SAFCA, and is articulated in their in
19 their white paper, is that rather than focus on spreading
20 on the risk, we should focus on addressing it at its
21 source. And we want of course the capital improvements.
22 But also tying that back to the Paterno issue of risk
23 notification, the state was in part liable because they
24 failed to notify the community about the risk. Local
25 communities can play a key role in doing so, and we

1 advocate for doing so. We've been very active in doing
2 so, maybe with other JPAs. And the underlying entities,
3 the city and the county, have been very active to do that
4 as well.

5 Flood preparedness and flood response by
6 preparedness. In all its manifestations there's something
7 that local entities can do and are actively engaged in and
8 should be required to do as part of the risk management
9 strategy.

10 And finally coming back to the flood insurance
11 issue. SAFCA asserted, and this again with the Board's
12 concurrence, that flood insurance should ultimately be
13 mandatory in the floodplain.

14 There are certain assumptions that go with that:
15 That the flood insurance rate should appropriately reflect
16 the risk, be attuned to what the true risk is; and that
17 there be mechanisms for dealing with inequities and other
18 concerns related to ability to pay. But we believe that
19 that's ultimately a wise policy to implement over time.

20 So there are tools for directly getting at the
21 risk and reducing it. And it's a great challenge we all
22 face and should be engaged in together. And we believe
23 that the effort by the Board now to spread the pain in
24 this way, in light of the new framework established by the
25 Legislature, is inappropriate and ultimately would be

1 ineffective and counterproductive.

2 Thank you.

3 PRESIDENT CARTER: Thank you.

4 BOARD MEMBER BROWN: I have A question, Mr.

5 Chairman.

6 PRESIDENT CARTER: Let's hold the questions if we
7 could, Mr. Brown. We've got a long list of folks. I'm
8 thinking that perhaps maybe we ought to, given the length
9 of these comments and the number that we have on the list,
10 we ought to break for lunch and reconvene on this item
11 after lunch.

12 So let's take a an hour-long lunch. And we'll be
13 back here at 1:10.

14 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 PRESIDENT CARTER: Good afternoon, ladies and
3 gentlemen. Welcome back.

4 As a reminder, I want to mention to you that we
5 are now on Item 10 on our agenda today, which is the Board
6 discussion of local project cooperation agreements.

7 We have heard from staff. We have heard from Mr.
8 Shapiro and Mr. Buer.

9 Next on the list is Ms. Gray.

10 MS. GRAY: Good afternoon. My name is Janelle
11 Gray and I'm with the City of Sacramento Treasurer's
12 Office. And this afternoon I'm here representing Russ
13 Fehr, our City Treasurer, who wanted to be here but
14 unfortunately had an out-of-town obligation.

15 In order to help expedite -- being the first one
16 back after lunch, in order to help expedite and get the
17 ball rolling, I'll be very brief in my comments.

18 What I wanted to talk about was the concern that
19 we have as far as the indemnification on the impact of
20 borrowing funds for local government public infrastructure
21 and amenities.

22 Since Hurricane Katrina and the resultant
23 catastrophic flooding, obviously flood disclosure has been
24 heightened in its awareness and significant attention paid
25 to it from municipal market participants. That includes

1 rating agencies and the scrutiny of our risk assessment,
2 bond insurers and their exposure to the risks associated
3 with flood, as well as to the investors and their options
4 of what bonds that they'd like to purchase.

5 And while we can't predict what our market
6 participant actions would be as a result of this, the
7 potential indemnification that you're considering today
8 and discussing, it is our belief and position that it
9 would be a disclosable item. It would hit our balance
10 sheet and it would have adverse -- I guess you'd say
11 adverse impact to our position in the market. There would
12 be credit worthiness questions, and potentially increasing
13 the cost of our borrowing. Obviously this can have
14 trickle down to our constituents, whether through
15 increased assessments to cover those costs, through
16 increased user fees, or through a reduction in services as
17 a result of increased borrowing costs.

18 And as you consider this option, I just want you
19 to take that under consideration as far as it reaches far
20 more than just what you're discussing today. But it has a
21 trickle-down effect to a lot of the indirect things and
22 businesses that local cities have to deal with also, and
23 local counties, agencies, and other jurisdictions.

24 And I'll conclude my remarks and hope that it'll
25 be brief for the rest of the day.

1 Thank you.

2 PRESIDENT CARTER: Thank you very much.

3 Mr. Holloway.

4 MR. HOLLOWAY: Good afternoon, Mr. President and
5 members of the Board. My name's Brian Holloway and I'm a
6 trustee of the American River Flood Control District,
7 which is also here in Sacramento, which is also a member
8 of SAFCA.

9 Our district is responsible for the O&M of
10 approximately 40 miles of levee here in Sacramento that
11 protect much of Sacramento, and including the State
12 Capitol and this very building.

13 We work closely with SAFCA to ensure that the
14 projects that they design and that they construct are well
15 maintained by us. But we do not have any control over the
16 actual design or the construction of these flood control
17 projects. That role is played by the Corps, DWR, and
18 SAFCA.

19 We believe that we have the best maintained
20 levees in the Sacramento Valley. And we are ready and
21 willing to stand behind our O&M and indemnify the state
22 for any failures due to inaction or action on our part.

23 However, we believe that it would be unfair for
24 the state to require us to indemnify them for failures in
25 other parts of the flood control system where we have no

1 control at all.

2 For instance, the Pocket Area of Sacramento is
3 within SAFCA. And therefore we're a member of SAFCA. But
4 it's maintained by MA9, which is a state agency. How
5 could my district be held to be financially responsible
6 when we have no roll in maintaining the levees in that
7 area?

8 Our district supports the compromise suggested by
9 the California Central Valley Control Association and as
10 well articulated by Scott Shapiro.

11 And thank you very much for the opportunity to
12 speak to you today and also for moving me up on the
13 agenda. And we're here to answer any questions. Tim
14 Kerr, our General Manager is here to answer any questions
15 as well.

16 Thank you.

17 PRESIDENT CARTER: Thank you very much, Mr.
18 Holloway.

19 Mr. Hight.

20 MR. HIGHT: Mr. President and members of the
21 Board. Thank you very much for the opportunity to be
22 here. My name is Paul Hight. I'm with the County of
23 Sacramento Risk Management Office. And I'm here to speak
24 on behalf of both SAFCA and the county because it's my
25 responsibility in the office to place insurance on behalf

1 of both SAFCA and the county.

2 And I'd like to point out that the template, if
3 it is such, that is being used for the Three Rivers
4 program gives me great concern. From an insurance
5 standpoint, I have a great concern that it's not even
6 insurable if that kind of indemnification is being used as
7 proposed.

8 My concern is based on the fact that insurance is
9 a fault-based contract of indemnity. If there is no fault
10 of the party that is indemnifying another party, there is
11 likely not going to be any insurance. And the indemnified
12 party seeking that indemnity protection will be uninsured
13 as well. And this would be the case even if the other
14 party is being named as additional insured.

15 So in all the considerations I would highly
16 recommend that great care be given to the way the
17 indemnification language is being constructed, so that we
18 do not leave either the JPA or the member agencies, which
19 by the way share the same type of insurance program, and
20 the interests of the Board that we not leave any of these
21 parties unprotected. Because I think there's an
22 assumption here that insurance will play a major role in
23 protecting all the parties. So I just want to make that
24 point very clear.

25 Going forward, any indemnification that would be

1 proposed and used should be fault-based, it should not
2 pick up the indemnity and negligence of other parties that
3 don't have a right to be indemnified - and I'm thinking of
4 the U.S. Government perhaps - and it needs to take into
5 consideration the structure and language in the
6 indemnification so that it does not violate the principles
7 of insurance.

8 We cannot force our insurance carriers to cover
9 all losses. Therefore, we have to be very careful in how
10 that indemnification language and any additional insured
11 requirements are crafted.

12 So, again, I would just recommend that the Board
13 consider that very carefully.

14 I'm here to answer any questions if there are
15 any.

16 PRESIDENT CARTER: Thank you very much.

17 MR. HIGHT: Oh, one other point. There was an
18 earlier mention about perhaps slip and fall, for instance,
19 somebody's walking along a levee and they slip and fall.
20 The insurance I believe would respond to that kind of a
21 claim because it would be based on some act or omission of
22 negligence perhaps. At least the defense would be
23 available.

24 My concern would be the type of indemnification
25 that's being proposed and the scope of it to pick up all

1 loss, no matter what, including no fault of the parties,
2 the JPA or a member agency, would not be covered. So I
3 want to make sure that distinction is clear. We're not
4 talking about slip and falls. We're talking about
5 something way beyond that.

6 Thank you.

7 PRESIDENT CARTER: Thank you.

8 Mr. Erickson.

9 MR. ERICKSON: Thank you, Mr. President and
10 members of the Board. My name is Ron Erickson. I am the
11 Sutter County Counsel. I'm here with Supervisors Dan
12 Silva, Stan Cleveland, and Public Works Director Doug
13 Gault to add our voice in opposition to the proposal.

14 I concur with all of the remarks that have been
15 made so far. And I would just maybe throw out two things.
16 I'm not an expert on local government financing, but I've
17 talked to a couple of people who are. And I think this
18 definitely would be a disclosable unfunded mandate which
19 would severely chill our ability to issue any bonds.

20 And, second, just another word you sometimes hear
21 in the law, and that's a vain act. In the event of a
22 catastrophic damage award, Sutter County could not
23 indemnify the state. And the only effect of that
24 indemnification would drive us into bankruptcy.

25 Thank you for your time.

1 PRESIDENT CARTER: Thank you.

2 Mr. Devereux.

3 MR. DEVEREUX: President Carter, members of the
4 Board. Paul Devereux. I'm the General Manager of
5 Reclamation District 1000 in Natomas. I'm here to support
6 the remarks that Scott has made on behalf of the Central
7 Valley Flood Control Association, of which we are a
8 member.

9 Just a couple quick points. One is to reiterate
10 what Mr. Holloway from American River had talked about,
11 which was the unfairness of potentially requiring our
12 district to indemnify for construction operations and
13 maintenance of areas that are not in our geographic
14 location.

15 Second point I do want to make is our board has
16 agreed and acknowledges that they will be coming and
17 signing an agreement with this Board for the operation and
18 maintenance of the Natomas levee improvements. And we
19 understand the indemnification provisions included
20 therein.

21 And we'll be glad to be working with this Board
22 on the details of what those provisions are in that
23 agreement. But we acknowledge that and understand that we
24 will be here for the O&M of it.

25 And last just a quick point. You know, my

1 concern is that this will have a chilling effect on JPAs
2 and the forming of new JPAs. My experience, I worked with
3 Butch at SAFCA for nine years before I went off with local
4 flood control districts. And I think JPAs have been a
5 great thing of bringing land use decision makers in the
6 same room with flood control trustees. And the knowledge
7 that is gained and the information that is exchanged helps
8 land-use decision makers in making those decisions. And I
9 would think that if we go this route, we'll start going
10 back to the -- you know, bifurcating flood control from
11 land use decisions, and I don't think that's a good way.

12 I think we ought to continue with the JPAs. I
13 think they're a good thing. But I'm afraid that a policy
14 that's blanket like this will have a chilling effect on
15 that.

16 Thank you.

17 PRESIDENT CARTER: Thank you.

18 Mr. Ruzich.

19 MR. RUZICH: President Carter and members of the
20 Board. I'm Ken Ruzich. I'm Manager of Reclamation
21 District 900.

22 Just to kind of go over the same points again.

23 The West Sacramento JPA doesn't own any levee.
24 The West Sacramento JPA doesn't operate and maintain any
25 levees.

1 The levees in our improvement program consist of
2 26 miles of federal levees, which is mostly the west levee
3 of the deep water channel; five miles of state-owned or
4 maintained levees; the Sacramento Bypass and Maintenance
5 Area 4; and then a couple of miles maintained by District
6 537 and 14 miles maintained by District 900.

7 Our JPA consists of the City of West Sacramento,
8 which doesn't own or operate any levees, and Districts 537
9 and 900, who have existing joint use agreements with the
10 state for the levees they operate and maintain, which
11 provide assurances to the state for the maintenance
12 operation of those levees.

13 We don't see any need for us to provide assurance
14 to the state for levees that are maintained by the state
15 or the Corps of Engineers or another reclamation district.

16 Currently when we have a Sac Bank or a PL 84-99
17 project on our levees, we sign an updated joint use
18 agreement with the state to reflect those improvements.
19 It seems like it would be pretty to use that same
20 procedure for any of our levee improvement projects to
21 provide in any needed assurances to the state.

22 So, that's all I've got.

23 PRESIDENT CARTER: Thank you very much.

24 Mr. Giottonini.

25 MR. GIOTTONINI: Good afternoon, President Carter

1 and Board members. My Jim Giottonini. I'm the Public
2 Works Director for the City of Stockton. I'm also the
3 Executive Director for SJAFCA. It's the San Joaquin Area
4 Flood Control Agency. It's a JPA of the City of Stockton,
5 San Joaquin County, and the County Flood Control Water
6 Conservation District.

7 About in the mid-nineties we did a \$70 million
8 project in three and a half years. And if the Board
9 follows through on this indemnification proposal, I don't
10 think that kind of project would be possible today. It
11 would take much, much longer.

12 So in conclusion, we support Scott Shapiro's
13 analysis of this issue, and primarily because we think
14 it's going to slow flood protection projects that are
15 going to be undertaken by locals.

16 If you have any questions, I'll be glad to answer
17 them.

18 Thank you.

19 PRESIDENT CARTER: Thank you very much.

20 Mr. Eres.

21 MR. ERES: Good afternoon, Mr. President, members
22 of the Board. Tom Eres representing Hofman Ranch. I find
23 myself in the usual position of flying in the face of a
24 stampede of folks in favor of one side of an issue; I'm on
25 the other side of the issue.

1 I would point out to you that it's interesting
2 that our two public ex officio members are not here. This
3 is the classic kind of an issue that you would think that
4 our member of the Assembly and Senate would be notified
5 of - and maybe they were - and would be aware of something
6 of this great import and would be here, because I'm
7 hearing a lot of references to what goes on at sometimes
8 we affectionately refer to as the puzzle palace down the
9 street with the dome on it.

10 The difficulty we have here is what's the purpose
11 of the identification. And I thought Ms. Cahill presented
12 a very good memorandum, and I believe that the arguments
13 in favor of the indemnification are reasonable and
14 prudent.

15 And what's the bottom line here? It's the
16 public. It's the public. This whole issue is about
17 accountability. And accountability has to do with what
18 are we dealing with here. We're dealing with public trust
19 bordering on fiduciary - and I believe it is fiduciary -
20 and taxpayers. All the money we're talking about here,
21 folks, comes from your and my pocket as taxpayers. It
22 doesn't flow out of the sky from some bond issue some
23 place or some lotto ticket. It is simply a matter of
24 accountability. And I would suggest this indemnity
25 requirement in this agreement is simply good and prudent

1 as far as accountability.

2 We're dealing with actions very significant about
3 these entities that have come up and spoken to you. We're
4 talking about flood works, flood protection, public
5 safety. This is very, very heavy-duty stuff. And this is
6 stuff that takes a lot of your time. And the public for
7 the most part only hears about it in a very, very
8 tangential way.

9 What are JPAs? Now, it was cited to you what the
10 statute says as to a JPA. But why are they formed? Why
11 do you need a JPA? Why can't you just have a joint
12 contract, a joint enterprise and have the members work
13 together in concert with one another? Why do they need a
14 joint power agency?

15 My suggestion to you from the public's
16 perspective is it creates a shell, it creates a buffer.
17 If you will, it is designed to try to do exactly what the
18 indemnification is trying to bridge around. And, that is,
19 the protection of the members. And, remember, as I say
20 before, we're talking about money, dollars.

21 What I think the indemnification does is it has a
22 very, very important side benefit which I think is really
23 critical. And, that is, it forces a sense - a stimulus,
24 if you will - that these JPAs in fact are doing the level
25 of due diligence and reporting back to the member agencies

1 in a way that when they move out and put projects
2 together -- remember, these JPAs are the ones that come
3 before you asking for the permit. They come before you as
4 a lead agency under CEQA. They come before you as a
5 requester with the Corps of Engineers for their
6 appropriate permissions.

7 So it seems only appropriate that if they're
8 going to take and design the boat that they present to
9 you, that they set in the same boat. And if it leaks,
10 they either plug it up with you or they sink with you.
11 The idea that somehow they're coming up here advocating
12 "It's going to affect our financial ability, it's going to
13 affect our insurability," I'm sorry, that's the cost of
14 doing business. And if you're going to be involved in
15 public safety and protecting the public, then you ought to
16 be held accountable across the board and not be in a
17 position where somehow you're being carved out because
18 "Well, we could only go this far down the road. We can
19 only get our foot a little bit into the boat. But if that
20 boat starts to leak, we want to get back on terra firma."
21 I don't think that's good public policy, I don't think
22 that's in the interest of the public.

23 The other aspect of the stimulation I think is it
24 causes a deeper level of reasonable and prudent and due
25 diligence when they put these projects together. And they

1 look at the feasibility of these projects and they come
2 before you with a sense that they're not simply going to
3 be up here as a talking head or as a shell or as a buffer,
4 that there's going to be direct connectivity in this case
5 that you're going to be having on the next agenda item
6 directly to the County of Yuba. And that direct
7 accountability goes to elected officials.

8 I don't think the members of the JPA are elected
9 as members of the JPA. I don't think they stand for
10 election. They are appointed individuals, and you have
11 public members in addition to elected officials who serve
12 on them. But the accountability should be with the
13 elected officials who put together the joint power
14 authorities in their local districts and local areas.

15 It also seems to me that when we were talking
16 about slip and fall and tort -- and I think Butch asked a
17 question, "What the heck is a tort?" And I know you don't
18 eat it for breakfast. That's as far as I know, and I'm a
19 lawyer.

20 But the bottom line is I used to recall just
21 simply a matter that there is an act or an omission where
22 there's a duty, there's been a breach of that duty,
23 there's causation that you can trace for why the breach
24 occurred, and then there's damages. And so tort liability
25 is based upon trying the issue of liability and then the

1 issue of damages. And so it seems to me at this stage of
2 the game, given the magnitude of the flood works that
3 we're dealing with, it really does take everyone who is a
4 stakeholder to remain a stakeholder when the thing goes
5 bad and we're talking about - call it, if you will - risk
6 sharing. And that's what it really is, it's risk sharing.
7 It's not a carve-out and saying, "No, not us. It's too
8 big of a bite of the pie for us to take."

9 And, again, as far as the issue of insurance and
10 flood insurance, remember flood insurance is very
11 expensive stuff. If you want FEMA -- I believe the limit
12 on FEMA is still about \$250,000 - I'm not sure on that -
13 which means an individual has to go get some sort of
14 umbrella coverage if they can.

15 So the idea that somehow that there's FEMA
16 insurance that's going to somehow protect the public as a
17 result of these projects and if there is some sort of an
18 event that -- I'm going to say, in using by analogy, the
19 Dave Jones Bill, the SB 70. Remember, the standard that's
20 set in that bill is unreasonable. That presumes
21 reasonable. So when the litigation flows, it will always
22 be on -- the question is, were the actions taken
23 reasonable? If they were not reasonable, then the Jones
24 Act - I'll call it that - isn't going to protect these
25 folks for what they have done.

1 And, again, at the end of the day they're the
2 applicant before you. They're the applicant, not you.
3 You're not initiating here. They're initiating. So if
4 you're in for a dime, in my view, you're in for a dollar.

5 And the question here ultimately gets down to
6 where's the beef? Because if in fact the JPAs expire or
7 are terminated or evaporate, what are you left with? The
8 members. And all this indemnification is designed to do
9 is to make that clear upfront with respect to the public
10 and understanding that.

11 And with respect to this being a component that
12 deals with the credit worthiness, of course it deals with
13 credit worthiness. Every one of us in business deals with
14 credit worthiness. It deals with how we operate and how
15 we're rated and what we pay for in terms of premiums.
16 That's a cost of doing business, and the indemnification
17 is simply a cost of doing business.

18 So I would suggest to you from my standpoint that
19 the indemnification is an appropriate, prudent state
20 policy that this Board should adopt and it should apply
21 equally. I don't agree with the notion that you do it on
22 a case-by-case basis. I think this is an area where the
23 public policy is so important that it should be applied
24 across the board as, this is the policy of the Central
25 Valley Flood Protection Board.

1 Thank you for hearing my remarks.

2 PRESIDENT CARTER: Thank you.

3 That's the last comment card I have.

4 Is there anybody else that wishes to address the
5 Board on this item?

6 Staff?

7 Well, let's open it up for discussion.

8 VICE-PRESIDENT HODGKINS: Is Ward Tabor still out
9 there?

10 You turkey. You left.

11 LEGAL COUNSEL CAHILL: No, he had to leave.

12 I can tell you that he is in agreement with the
13 staff position. And that's what he would have told you
14 had he been able to stay.

15 He points out that there are two or three
16 separate state laws which require indemnity from local
17 entities in terms of the "share the pain" argument.

18 The Legislature has decided that the state must
19 go get a local entity to offer these indemnities. It's
20 not -- it's legislatively required. These are permanent
21 agreements. These are permanent facilities. And so to
22 enter an agreement with an entity that may disappear while
23 the facilities are still out there could not be -- might
24 not be fulfilling our responsibilities as state agencies.
25 And that I believe to be a fair statement of Mr. Tabor's

1 position.

2 PRESIDENT CARTER: Any other questions,
3 discussions?

4 Does anybody have questions of the people that
5 spoke?

6 VICE-PRESIDENT HODGKINS: We had a gentleman from
7 Sacramento County Insurance Office.

8 Could you try and answer a question --

9 PRESIDENT CARTER: Mr. Hight.

10 MR. HIGHT: Yes, I'd be glad to. Thank you.

11 VICE-PRESIDENT HODGKINS: When the county decides
12 how much insurance they need, how do they decide that?

13 MR. HIGHT: Well, the county has a lot of
14 operations, everything from law enforcement to operating
15 airports, sewer lines and so forth.

16 So, first of all, we look at our operations. We
17 look at what we can transfer via indemnity agreements. We
18 also look at the availability to fund a self-insured
19 retention. We look at the availability of insurance
20 limits in the marketplace for public entities. And for
21 public entities, it's pretty tough. And it's also quite
22 expensive.

23 I will tell you now that the County of Sacramento
24 carries \$25 million of insurance excess of a \$2 million
25 self-insured retention. I don't have any problem sharing

1 that. You could find out otherwise. So that's what we
2 have available.

3 And I will tell you that SAFCA has \$35 million
4 with a self-insured retention of \$100,000. SAFCA has not
5 always been able to obtain that limit of insurance. There
6 were times where we could only get \$15 million. But we
7 are always looking for the opportunity to increase the
8 limits. But it's always at a price.

9 So it's really a lot of factors that any public
10 entity, whether it's SAFCA or the County of Sacramento,
11 has to weigh when they make decisions about purchasing
12 insurance and also what kind of self-insured retention
13 they're willing to carry.

14 VICE-PRESIDENT HODGKINS: Thank you.

15 The SAFCA policy, does it cover flooding?

16 MR. HIGHT: The SAFCA policy, like most other
17 liability insurance policies, is fault-based. Therefore,
18 if fault is found with SAFCA, just as if fault was found
19 with the County of Sacramento, there would be both defense
20 and indemnity. But there has to be some fault to that.
21 There has to be some liability. It was said earlier about
22 proximate cause and a duty and a breach and damages.
23 Those are the elements that would have to be shown.

24 So, if SAFCA is hit with some kind of a claim of
25 responsibility, including an indemnity provision that is

1 beyond the scope of the insurance policy, in other words
2 there's no fault shown of SAFCA, but there's an
3 expectation that SAFCA would be responsible, they probably
4 will not have the insurance protection that they want, so
5 they'd be uninsured.

6 VICE-PRESIDENT HODGKINS: Can you share with us
7 roughly the cost of SAFCA's annual insurance?

8 MR. HIGHT: SAFCA's policy renewed on 7/1/08, and
9 it was approximately \$350,000. And I already know that
10 it's going to go up by about another hundred thousand
11 dollars next year. I've already been advised of that.

12 VICE-PRESIDENT HODGKINS: Thank you.

13 MR. HIGHT: You're welcome.

14 Any other questions that I may --

15 BOARD MEMBER RIE: Yes, I have a question.

16 MR. HIGHT: Yes.

17 BOARD MEMBER RIE: Our counsel has told us that
18 we can ask the local agencies that are part of JPAs to
19 agree to hold the state harmless, but we don't have to ask
20 for that. So I was curious, is it even legal for a local
21 agency if they're not a party to the application or to the
22 permit directly, and the JPA is the applicant, can a city
23 or county legally volunteer to hold the state harmless
24 when they're not a party to the application?

25 MR. HIGHT: If that came to the Risk Management

1 Office for the County of Sacramento I would not make the
2 recommendation that the county volunteer without some very
3 good reason for that. And my concern in what is being
4 considered here in the Three Rivers as a template is that
5 the way the language is being written in the indemnity
6 provision, any party signing that, first of all, probably
7 doesn't have insurance to cover it. And I also question
8 whether or not it's even enforceable as an indemnity
9 provision, because it doesn't talk about fault.

10 And these types of revisions are not unlimited.
11 They have to -- there has to be some fault to it and there
12 has to be some way to make that financial obligation that
13 it may trigger to be covered. And that's why the
14 insurance and the indemnity go hand in hand. You cannot
15 have one without the other. And if the indemnity is off,
16 it may push the insurance off. And that's what I'm
17 proposing here, that I think the insurance is going to be
18 a major issue. Not just the cost, but in fact I don't
19 think it will even be available.

20 So my recommendation would not be to sign
21 something that is just voluntary. We'd have to have a
22 good reason why. There'd have to be an interest on the
23 part of the county. But that would be something that
24 would have to be considered. And it may be a policy
25 decision beyond just risk management. The Board perhaps.

1 BOARD MEMBER RIE: Well, does it -- I don't know
2 if this applies to your agency. But what about the
3 counties and the cities that are self-insured? They have
4 no insurance per se.

5 MR. HIGHT: It's not likely that they have no
6 insurance. What they typically will do is they will carry
7 a level of self-insurance, and it might be down to a
8 50,000 or \$100,000. Most cities and all the counties that
9 I'm aware of and a lot of other special districts actually
10 belong to some kind of an organization.

11 And just so you know, the county and SAFCA belong
12 to an organization called the Excess Insurance Authority.
13 Now, I discussed the issue at hand here with the Excess
14 Insurance Authority. They have a great deal of concern,
15 and they concur with me, that we're looking at an issue
16 here that is probably not insurable under the Excess
17 Insurance Authority's Memorandum of Coverage. And I'm
18 very familiar with that coverage. And so they concur that
19 they have a lot of concerns that we're looking at
20 something here that's just not insurable, the way it's
21 being set up. I'm not saying that tort liability is not
22 insurable. I'm saying the broad language and scope with
23 no fault, no negligence, no standard of care being
24 expressed in the indemnity provision would be beyond what
25 the insurance company and the memorandum of coverage would

1 allow.

2 BOARD MEMBER RIE: Okay. Thank you.

3 MR. HIGHT: You're welcome.

4 LEGAL COUNSEL CAHILL: If I could point out that
5 the indemnification clause says "to the extent allowable
6 by state law." So to the extent that something does go
7 beyond what state law would require, we're not requiring
8 that. So it would -- in terms of how much fault is
9 required, that would be other provisions of state law that
10 would come in and determine that. But we're not requiring
11 an illegal indemnity. We're only requiring it to the
12 extent it's allowed by state law.

13 And could I ask a question, President Carter, of
14 this person?

15 PRESIDENT CARTER: Yes.

16 LEGAL COUNSEL CAHILL: The JPAs themselves, do
17 they have adequate insurance? I mean everything you're
18 saying about the cities and counties, is it also true of
19 the JPAs? Or are they able to do it? I mean if there's
20 one event and there's the JPA and all its members, it
21 seems you only have to cover it once.

22 MR. HIGHT: Well, the way it's being proposed,
23 they're all indemnifying parties. So it's possible if the
24 indemnification language were written, and I believe, more
25 effectively so that it is fault-based and that it does not

1 reach outside the scope of coverage an insurance policy
2 could provide, it's possible that all the parties would
3 have their insurance programs triggered for protection.

4 So I think it's important that as the
5 consideration is given to how the indemnity language is
6 being written, that it not be written so broadly that it's
7 of really little value. We're not arguing that insurance
8 isn't available. We're just saying let's make sure that
9 it's triggered properly so that nobody's left uncovered.
10 Now, maybe the loss is so big that the 35 million of SAFCA
11 and the 25 million of the County of Sacramento is not
12 enough. But I'd rather assume that we have insurance
13 coverage to begin with rather than assuming we have no
14 coverage, period.

15 BOARD MEMBER BROWN: See, I understood the
16 question to be just a little different than that, Mr.
17 Chairman.

18 Would you ask it again, please?

19 LEGAL COUNSEL CAHILL: I was asking the extent to
20 which the joint powers authorities themselves are insured,
21 setting side their members. I mean we're not really
22 disputing here that we can get these agreements from the
23 joint powers authorities themselves. And so I'm just
24 inquiring what level of insurance they have.

25 MR. HIGHT: Well, I only know about SAFCA's level

1 of insurance because I place it. And at this point it's
2 \$35 million.

3 Oh, and I've been advised that Three Rivers is 15
4 million.

5 LEGAL COUNSEL CAHILL: Thank you.

6 PRESIDENT CARTER: Ms. Suarez.

7 BOARD MEMBER SUAREZ: Yes. I want to follow up
8 Ms. Cahill's question.

9 Are you looking at -- what is it? -- paragraph C,
10 I guess it would be, on the proposed agreement? Is that
11 the language that you were referring to?

12 LEGAL COUNSEL CAHILL: No. If you look at -- I'm
13 looking at Section 4, Indemnification, on page 7 of the
14 agreement that includes Yuba County. It's in the TRLIA
15 ones. So Section 4, Indemnification. "Three Rivers,
16 County, and District, shall" -- and in fact I've agreed
17 with Mr. Shapiro that we'd take out "each" and add
18 "jointly and severally" there -- "hold, defend, indemnify
19 and save the State and the Board, their officers, agents,
20 and employees, and successors or assigns, to the extent
21 allowed by State law, free and harmless from any and all
22 claims" --

23 BOARD MEMBER SUAREZ: So that's the part I want
24 to -- so I understand what you're saying under negligence
25 law, which is I guess what you're referencing, there's a

1 fault requirement. But can it be argued that under
2 contract law they seem to be agreeing to accept liability
3 even if no fault can be proven under negligence?

4 LEGAL COUNSEL CAHILL: Yes, it's allowed under
5 state law. For example, the standard for inverse
6 condemnation is not negligence but unreasonableness.

7 And so if they were unreasonable, they might not
8 be negligent. But if they were unreasonable and it
9 triggered the liability -- Sorry. It's not on this thing.

10 You know, there always been an argument by the
11 local entities that we were asking them to indemnify us
12 from our own negligence. And I think this "to the extent
13 allowed by state law" is intended to not have that happen,
14 because we would find if we looked --

15 BOARD MEMBER SUAREZ: But the gentleman's point
16 being that he's got insurance based on fault. And, yes,
17 under negligence he might be covered but under other
18 theories he might not be.

19 LEGAL COUNSEL CAHILL: He might not be.

20 PRESIDENT CARTER: Questions?

21 SECRETARY DOHERTY: To simplify this. I feel
22 that you all came to the table. You sat around, you
23 discussed it. You decided, "Okay, I can trust this one, I
24 can trust that one. Okay, fine. Let's proceed." And
25 you're all there to enjoy the fruits of that labor. So,

1 at what point do you want to jump out? When things get
2 rough? Or you're all going to see it through?

3 So that's my feeling.

4 VICE-PRESIDENT HODGKINS: I just have a comment,
5 I think. My original motivation I think was triggered by
6 my reaction to local government reaction to FEMA flood
7 insurance, with the potential to end up in a regulatory
8 floodplain where it appeared to me local governments then
9 were aggressively encouraging development to get their
10 project in and approved before the maps became effective.
11 Okay? That to me was -- and it flew in the face of good
12 public policy from my viewpoint.

13 Now, after we've talked about this, I mean the
14 idea of thinking anybody could potentially shoulder the
15 burden for \$25 billion in flood insurance damages, which
16 might occur if the City of Sacramento were flooded, is
17 kidding yourself. On the other hand, I think the thing
18 that's come out of this for me is that in effect we have
19 been requiring the execution of an indemnification
20 agreement without any assurances that anybody can provide
21 any indemnification over the life of the project.

22 And so my desire -- and I don't want to belabor
23 this if I don't have support for this -- would be to ask
24 the parent agencies to sign on to a limited amount of
25 indemnification, which right now -- and this is -- I'm the

1 last person in the world that ought to pick a number out
2 of the air because I don't know -- I don't have any basis
3 for it other than what seems like a big number. And I
4 would say \$25 million.

5 So in effect that kind of an indemnification
6 would mean that as long as the JPA had \$25 million in
7 insurance, which is affordable, although not cheap by
8 SAFCA's terms, the state would be assured that there's at
9 least 25 million out there, assuming there is some
10 liability. And in the case of SAFCA or Three Rivers or
11 West Sac, where they are -- I don't know if West Sac's
12 designing it's own projects, but certainly SAFCA and Three
13 Rivers are -- that seems like a perfectly appropriate
14 thing to do.

15 The only question that I have that I can't answer
16 is, is 25 million way too low? Should we be asking for
17 250 million? Or is it way too high? And the other part
18 that would concern me, I don't want to spend money if
19 we're not getting anything for it. So I think the idea of
20 working on the terms of this indemnification that passes
21 on \$25 million to the parent agencies is something that
22 has to be done in a manner that makes it meaningful, which
23 means we'd have to kind of turn it over to the attorneys,
24 I think, and let you figure it out.

25 But that's seems to me to be a very reasonable

1 thing to do, with the exception of I don't have a real
2 good rationale for picking \$25 million other than it's
3 available.

4 LEGAL COUNSEL CAHILL: I am not persuaded that
5 that would comply with the statutory requirements. The
6 statutory requirement doesn't have any limit, doesn't
7 suggest that there be a limit. Holding the United States
8 harmless from damages due to the construction of the
9 works, or has by binding agreement with Reclamation Board
10 agreed to assume -- this is what the local has to do --
11 agree to assume such obligations and to hold the state and
12 the Reclamation Board harmless from any claims they're
13 under. And "harmless" doesn't have a limit on it.

14 Now, out in the real world you won't get
15 everything from them. But I don't think -- I'm not sure
16 that putting a limit on it at the outset complies with the
17 requirement of the statute.

18 VICE-PRESIDENT HODGKINS: But understand, I am
19 not saying limit the liability of the principal executer
20 of the agreement with us. There's is unlimited.

21 LEGAL COUNSEL CAHILL: Oh, I misunderstood. I
22 thought that's --

23 VICE-PRESIDENT HODGKINS: The part that's passed
24 on to the parent agencies is capped at 25 million.

25 LEGAL COUNSEL CAHILL: I had misunderstood you.

1 I thought you --

2 VICE-PRESIDENT HODGKINS: I may not have been
3 clear.

4 PRESIDENT CARTER: Any other comments?

5 BOARD MEMBER RIE: A question.

6 I just want to be clear. A JPA can enter into a
7 local cooperation agreement with our Board, correct?

8 LEGAL COUNSEL CAHILL: Yes.

9 BOARD MEMBER RIE: Okay. And it sounds like the
10 JPAs that currently have permits before this Board have
11 insurance, at least two of them do that we know of.

12 So, do we have an ongoing problem that we're
13 worried that we're not going to be covered? I mean what
14 problem are we trying to solve here?

15 LEGAL COUNSEL CAHILL: We are trying to solve the
16 problem of JPAs that may not have sufficient resources
17 to -- originally we were trying to solve O&M. And I think
18 we've -- there's a compromise that probably handles the
19 O&M issue. So we're back to the indemnity.

20 We have JPAs that may run out of funds that they
21 can have on hand or raise to meet the indemnity
22 requirements, in which case we would also like
23 contribution from their members. And the one fear is that
24 there won't be enough money there in the JPA in its own
25 funds or insurance. And the other one is, if the JPA goes

1 out of existence and it was the only one on the indemnity
2 agreement, then we have failed to meet the statutory
3 requirement that we have a local entity providing
4 indemnity.

5 So these are long-term facilities, they're
6 long-term agreements. And so we need some assurance
7 either that the JPA will continue to exist or that if the
8 members dissolve it, they will step up to the plate
9 individually at that time -- or jointly themselves.

10 BOARD MEMBER RIE: I have to ask this question
11 again. I thought it was answered earlier.

12 Even if the counties and cities don't sign on
13 this local cooperation agreement, aren't they still liable
14 if someone files a lawsuit regardless whether they sign
15 the document or not?

16 LEGAL COUNSEL CAHILL: If it's the type of action
17 mentioned in the Government Code that I put up, which is a
18 negligent or wrongful act, yes, then you will pierce the
19 JPA and the members will also be liable.

20 BOARD MEMBER RIE: Okay. So you just said a few
21 minutes ago that we're concerned about the liability. But
22 I think we have the liability covered --

23 LEGAL COUNSEL CAHILL: Only for -- only for
24 wrongful and negligent acts. But possibly not for inverse
25 condemnation should there be a failure of the facilities.

1 If the JPA designs and builds facilities that later fail
2 and if there were to be a successful inverse condemnation
3 action, I am not sure that the Government Code section
4 that deals with wrongful and negligent acts would let you
5 pierce the JPA in that event.

6 BOARD MEMBER SUAREZ: Mr. President?

7 May I suggest, I think that last question is a
8 key one to me. Because I had struggled like Ms. Rie in
9 figuring out what the problem is. If the concern is on
10 what to me sounds like straightforward tort liability -
11 somebody gets injured because there's a hole along the
12 levee or something like that - it seems to me we are
13 covered. And in the balancing of recognizing the
14 importance of allowing these local entities to be able to
15 organize and work together -- there's a lot of talk on
16 this Board about coming up with system-wide approaches for
17 dealing with these problems, that we shouldn't be
18 piecemealing projects, that we should be looking at the
19 whole system in figuring out ways. Here is a mechanism,
20 the JPA, that allows us to do that.

21 Now, we're asking the members, the individual
22 parties on those joint authorities, to take an additional
23 risk for what purpose?

24 When it comes to tort liability there doesn't
25 seem to be a purpose, the statute it -- if we're talking

1 about another theory of liability like the Paterno case,
2 then that's a good question to ask. I don't know if we
3 have the answer to that question today sufficiently. None
4 of the members of the public addressed that issue. Ms.
5 Cahill's memorandum to us did not address that issue.

6 If that is a key issue, if that's the area that
7 we need to cover, then let's focus on that, let's develop
8 the material, let's develop the appropriate language to
9 deal with that if at the end of the analysis that's a
10 problem. If at the end of the analysis we find ourselves,
11 that we're covered under the statutory language on tort
12 liability, then the question has been answered and we
13 don't have to impose a cloud, an added burden on a
14 mechanism that allows local governments to get together
15 and work together to fund projects that are important.

16 Thank you.

17 PRESIDENT CARTER: Other comments?

18 VICE-PRESIDENT HODGKINS: I actually think that's
19 a good approach. That would be fine with me. I mean I
20 don't want to force people to pay money for something that
21 isn't buying us anything. So understanding what we're
22 covered for currently and what we would be -- what we
23 would add by passing all or a portion of that liability on
24 to the parent agencies would be helpful to me in deciding
25 where I am. I mean I don't want to -- if we are already

1 protected through tort liability for a design error on the
2 part of their consultants that results in flooding and, as
3 well, the gopher hole, then I'm not sure -- I'm just not
4 sure that I think there's a lot of reason to pass this on
5 to the JPAs.

6 LEGAL COUNSEL CAHILL: But there would a reason
7 perhaps to make sure that if the JPA were to go out of
8 existence, the members would step into its shoes.

9 BOARD MEMBER SUAREZ: But the statute -- when it
10 comes to tort liability, the statute allows us to pierce,
11 correct?

12 LEGAL COUNSEL CAHILL: Yes, if there's a JPA.
13 But if the JPA is out of existence --

14 BOARD MEMBER SUAREZ: -- we go to the individual
15 members.

16 LEGAL COUNSEL CAHILL: But they won't have signed
17 the indemnity agreement.

18 BOARD MEMBER SUAREZ: But they --

19 PRESIDENT CARTER: They won't even have signed
20 the permit. It's the JPA that signs the permit. We're
21 issuing the permit. If the JPA goes out of existence and
22 two years later --

23 BOARD MEMBER SUAREZ: Who assumes the
24 responsibility of the facility at that point?

25 PRESIDENT CARTER: Exactly.

1 BOARD MEMBER SUAREZ: The reclamation district,
2 correct?

3 EXECUTIVE OFFICER PUNIA: Yeah. The O&M will go
4 to the local levee maintaining agency.

5 BOARD MEMBER SUAREZ: We have somebody.

6 PRESIDENT CARTER: And is there a mechanism to
7 assure that that happens?

8 LEGAL COUNSEL CAHILL: Well, the O&M will go to
9 the -- but then there's no one still -- there's no one
10 around with an obligation to indemnify for non-O&M
11 problems.

12 BOARD MEMBER SUAREZ: But it would be -- it's the
13 same -- so we would go back to establishing under what set
14 of principles did we agree to this, who were the people
15 involved, whether it was the actual entity or the people
16 behind the entity. I mean just because it's somewhere in
17 the future, the mechanism that allowed us to engage in
18 these relationships is still there. We can -- the history
19 is still there. We can trace back and point to them and
20 we can bring them to court.

21 BOARD MEMBER BROWN: I don't think JPA allows you
22 to do that. It does not obligate the member agencies
23 individually to the contract made by the JPA.

24 BOARD MEMBER SUAREZ: But we're not talking about
25 contract liability. We're talking about tort liability.

1 And the statute's clear that we can pierce through --
2 whoever that entity was at the time the agreement was
3 made, we can pierce through it.

4 BOARD MEMBER BROWN: Okay.

5 VICE-PRESIDENT HODGKINS: So there's sort of two
6 questions. I guess I'd like to hear the state's
7 attorney -- which you're not quite. Almost.

8 BOARD MEMBER SUAREZ: No, never. I wouldn't even
9 dream of it.

10 VICE-PRESIDENT HODGKINS: Answer the question for
11 us. Can you -- if the veil goes away, do you have your
12 protection provided by the parent agencies? So if the JPA
13 is dissolved, do -- and we don't have the parent agencies
14 assigning the agreement, do we still have the
15 indemnification?

16 And then the second part is, if we added a
17 provision that requires the parent agencies to be
18 responsible for a set limitation, say \$25 million, what
19 potential losses, if any, are we actually covering with
20 that requirement?

21 Because there's two separate solutions. I mean
22 one of them is a provision in there that they have to sign
23 that says they agree to provide the indemnification if the
24 JPA is ever dissolved. And then the second would be some
25 limited amount of liability.

1 BOARD MEMBER RIE: Are we worried about someone
2 going out of business? Is anybody worried that SAFCA is
3 going to go away any time soon? I mean is there something
4 I don't know here?

5 PRESIDENT CARTER: Isn't everybody on the brink
6 these days?

7 (Laughter.)

8 BOARD MEMBER RIE: I would think that of anybody,
9 probably SAFCA and TRLIA have more money than the cities.

10 VICE-PRESIDENT HODGKINS: Could somebody from
11 SAFCA get up and answer that question?

12 PRESIDENT CARTER: Maybe -- Ms. Cahill, are you
13 prepared to answer the question?

14 LEGAL COUNSEL CAHILL: Well, at the time that you
15 originally required Yuba County to sign the TRLIA
16 agreement, there was -- there were those who doubted
17 either its long-term existence or its ability to
18 meaningful -- at that time even necessarily provide O&M or
19 indemnity. Especially if it looked like it was going to
20 finance the project and disappear, then the State wouldn't
21 have anybody on the hook for the indemnity.

22 And even if it lasts for 30-year bonds, this is a
23 permanent project.

24 MR. WASHBURN: May I just on behalf of SAFCA.

25 SAFCA's a very unique provision in state law.

1 BOARD MEMBER RIE: Could you state your name.

2 MR. WASHBURN: Tim Washburn, agency counsel for
3 SAFCA.

4 In the 1990 Sacramento Area Flood Control Agency
5 Act SAFCA was given the authority to create an operation
6 and maintenance district which pays for planning,
7 administration, operation and maintenance, and other
8 expenses, and it has no sunset. It exists forever,
9 grandfathered through 218 as a permanent funding source
10 for as long as any project exists. Whereas our capital
11 accounts do have sunset dates, the one -- our consolidated
12 capital assessment district assessments stop being
13 collected in 2037.

14 So we have the wherewithal to exist in
15 perpetuity. And it would be highly unlikely that the city
16 and county would want that to go away.

17 VICE-PRESIDENT HODGKINS: But if they did, could
18 they make it?

19 MR. WASHBURN: I would have -- I must confess to
20 you right now I'm not sure what exactly the succession law
21 is for the dissolution of a JPA. I'm going to guess there
22 is a winding up and dissolution process that doesn't allow
23 the debts to simply disappear. But I would need to go and
24 check that.

25 But in SAFCA's case, I'm just saying factually,

1 practically the likelihood that the city and county would
2 want that funding source to go away is, especially in the
3 worst of times, highly unlikely. And it's secured. It's
4 a lien against the property. It's not a general fund
5 account.

6 PRESIDENT CARTER: Thank you.

7 BOARD MEMBER RIE: Can we ask TRLIA the same
8 question? Is TRLIA likely to dissolve any time soon?

9 MR. SHAPIRO: Well, the other four JPAs were not
10 created by statute. They're by agreement. But as to each
11 of them, there either is in place or in process a
12 Proposition 218 assessment to raise dollars -- to raise
13 the dollars to maintain the actual levees that we're
14 improving.

15 If we were to go away, we would lose the
16 assessment money, which defeats the purpose. The reason
17 for creating the entity is to do the improvements and
18 raise the assessment money to maintain them. Indeed, in
19 Three Rivers' circumstance, while 784 currently has a
20 budget of about \$800,000, Three Rivers assessment will add
21 another -- I don't know what the number is -- 300,
22 \$500,000 and assign it to RD 784 to do the work. So Three
23 Rivers needs to exist to continue to raise the money that
24 we all want to spend on the levees.

25 Also, just to point out, that RDs don't exist in

1 perpetuity either. There is a provision for dissolving
2 them. And you actually can dissolve cities and counties.
3 It's just much harder.

4 PRESIDENT CARTER: Thank you.

5 By the same token, we -- through all of the
6 discussions that we've had with Three Rivers, there's
7 always been an implication, actually an explicit statement
8 that Three Rivers was not designed to exist in perpetuity.
9 In fact, when the project was done, Three Rivers was
10 supposedly going to go away. And we have been told that
11 on the record that that was the plan. Whether that is
12 still the plan or not, I don't know.

13 So we have different kinds of JPAs that we're
14 dealing with and issuing permits to.

15 I'm a little bit -- I'm a lot confused actually
16 in terms of, you know, whether -- I understand the issue
17 of we're protected from a tort perspective, we're not
18 protected necessarily in all the indemnifications -- or it
19 doesn't appear that we're protected in terms of all the
20 indemnifications. I think the goal here is -- we do want
21 to minimize risk. Our job is public safety. So, minimize
22 risk is good. But we all recognize that risk is always
23 going to be there. And to me, it seems appropriate that
24 all the parties that are involved -- and the game has
25 changed now from the old game of where the Corps and the

1 state built all the levees and did the designs. We do
2 have JPAs, we have other public entities and some private
3 entities building, designing, constructing these levees.
4 And it doesn't seem appropriate for those people to
5 be -- to step out of the way of liability should the going
6 get rough. It seems like they ought to have some skin in
7 the game so that they are very, very diligent in their
8 jobs and their professions.

9 I do have a problem with the indemnification if
10 you hold all -- or if you ask all the parties to the JPA
11 to sign and you have geographic differences amongst the
12 entities such as with what occurs with SAFCA. I don't
13 think that it's appropriate to hold one reclamation
14 district that has no business in a geographic area where
15 the levee is actually not being maintained well or happens
16 to fail because of whatever reason.

17 So, to the extent that -- I mean if we decide to
18 go with some indemnification, that it seems like it makes
19 sense to resolve that geographic issue, in my mind.

20 I don't know. It's a very, very -- it's a policy
21 issue: Does this Board want to have a policy to look
22 through the -- to require an indemnification clause to
23 look through the JPAs or not? And does it want to have
24 the flexibility to do that individually? Given that we
25 have a lot of different structures of JPAs and their

1 agreements are all different, it seems like if we do have
2 something, it needs to be tailored to those individual
3 agreements.

4 BOARD MEMBER BROWN: Mr. Chairman?

5 In reading the law as it's scripted here on the
6 Agenda Item 10, I just wonder what kind of flexibility we
7 have. It seems like it's come down to us from the
8 legislation and a legislator. And I don't know what kind
9 of changes we can make in this. It looks pretty clear the
10 way it's written. It says all the member agencies will be
11 liable.

12 The attorneys, do we have flexibility in the way
13 that's written?

14 BOARD MEMBER RIE: What are you looking at?

15 BOARD MEMBER BROWN: Well, if you read the last
16 sentence on just Agenda Item 10. I'll read it.

17 "There is one major exception: Government Code
18 section 895.2 does provide that where a joint powers
19 agency or one of its members contributes a negligent or
20 wrongful act or omission in the performance of the
21 agreement, all of the member agencies will be liable."

22 I mean that sounds -- it looks pretty clear if
23 that's the way the legislation is written.

24 VICE-PRESIDENT HODGKINS: Ms. Cahill, can --

25 LEGAL COUNSEL CAHILL: That's the Government Code

1 exception to the rule that they can escape liability by
2 their agreements. They have their agreements that let
3 them escape liability. Government Code section puts it
4 back on for negligent or wrongful acts.

5 So what we are picking up is the residual -
6 perhaps contractual claims, perhaps inverse claims, other
7 claims that are not, quote, negligent and wrongful acts.

8 I think you -- it is a policy matter. I think
9 you do have some discretion. The Legislature clearly
10 requires the state to get a local entity to offer
11 indemnity in several places in the Water Code. It doesn't
12 say specifically what you do in terms of JPAs. So one
13 interpretation is the JPA is the local entity; that's it.
14 The other interpretation is you need a local entity who
15 can either carry through or you want the best possible
16 chance of carrying through, and you want it to endure as
17 long as the facility that the JPA builds or is responsible
18 for. And in that case, you might want to bring in the
19 member agencies as well either throughout or with some
20 provision that if they ever dissolve the JPA, they will
21 step into its shoes and pick up that obligation.

22 BOARD MEMBER RIE: Does anybody know how many
23 member agencies are in SAFCA?

24 VICE-PRESIDENT HODGKINS: Five.

25 BOARD MEMBER RIE: Five. Are they all subject to

1 flooding? I mean it would just seem silly to me to have
2 one of those agencies who's going to be high and dry
3 during the flood to agree to participate in the liability
4 of a flood if one of those levees fails.

5 LEGAL COUNSEL CAHILL: One of your policy
6 decisions could be to require those members that are
7 benefited by the particular project or permit that we're
8 dealing with, so that you don't have the area north of the
9 American River involved when the project's south of the
10 American River. I mean I think you can do that. You have
11 I think a lot of flexibility.

12 BOARD MEMBER RIE: It would seem to me that by
13 putting together a policy, we would limit our flexibility.
14 And, you know, as we look at each local cooperation
15 agreement, we can ask other agencies to sign on those
16 agreements when we review that agreement. I don't think
17 we need to have a one-size-fits-all policy at this point.
18 We need to give ourselves some flexibility.

19 VICE-PRESIDENT HODGKINS: Well, I don't
20 necessarily disagree with that. But I think, without
21 taking this issue a little further at this point in time,
22 we're going to get into the same debate the next time
23 there's a JPA in front of us with an indemnification in
24 it.

25 PRESIDENT CARTER: And also I think it's -- it

1 serves the public. And it's only fair to let the
2 applicants know where the Board falls out on this, so that
3 we can establish some expectations and they can work
4 accordingly when they're developing these projects. I
5 think everything will run a little smoother. So I think
6 it behooves us to at least signal, you know, kind of where
7 the Board is. And I don't think it's productive to have
8 this debate every time we have a JPA come for a permit.

9 Does anybody have a motion?

10 SECRETARY DOHERTY: Yes, I'll make a motion.

11 That the Board will require assurances regarding
12 operation and maintenance and indemnity from the members
13 of a joint powers agency as well as from the joint powers
14 agency itself.

15 PRESIDENT CARTER: Okay. So we have a motion to
16 require assurances.

17 Is there a second?

18 VICE-PRESIDENT HODGKINS: I'll second.

19 PRESIDENT CARTER: Okay. We have a second.

20 Any discussion?

21 BOARD MEMBER SUAREZ: If there is a problem, it
22 would do us a great benefit, to this Board and to the
23 applicants, to really narrow that problem down, figure out
24 what the correct answer is and address it. There is a
25 general sense there might be a problem. I've heard at

1 least three or four different explanations of why we may
2 or may not need this. So there might be something out
3 there. I just don't think we have it right yet. And a
4 broad -- a broad application in a situation like this when
5 it can impact and shell the ability of local governments
6 to come together and work on big projects worries me.

7 So I'm all for figuring out what the problem is,
8 but I don't think we're there.

9 BOARD MEMBER BROWN: What about an amendment to
10 the motion that would allow us discretion as these
11 controversial permits come through?

12 PRESIDENT CARTER: I think my perception of the
13 problem is one of the Board has no policy and it makes
14 decisions individually and, in some people's eyes,
15 unfairly and we -- part of it is a process problem.
16 We don't -- we have these debates and we rehash -- we
17 essentially have the same vote whenever any of these come
18 up. And, again, I think part of the problem is process.
19 It's important for us to signal to the applicants and the
20 public where the Board stands on this.

21 The other part of the problem is that -- and I
22 know, Emma, you don't -- this is much clearer in your mind
23 than in mine. But to the extent that the JPA dissolves at
24 some point in the future, who does the state look to for
25 indemnification? And --

1 BOARD MEMBER SUAREZ: I don't disagree that it's
2 murky. I have no idea. That's my point. We do not know
3 a lot of the answers to these questions. We do know that
4 the law requires that the individuals be held liable, that
5 the JPA does not provide a shield. What happens after the
6 JPA disappears? Does that mean those obligations
7 disappear? Probably not. But we need to get a straight
8 answer on that, because obviously we -- I don't have the
9 correct answer and none of the materials prepared for us
10 address that question.

11 VICE-PRESIDENT HODGKINS: Two issues. One is,
12 who provides the indemnification if the JPA disappears?
13 As a matter of policy, it would seem to me that the Board
14 should ask the parent agencies to guaranty to provide the
15 indemnification if the assigning agency disappears,
16 whatever the appropriate term is. You know, if SAFCA
17 can't disappear, then no problem. They'll be able to
18 figure that out amongst themselves and it won't bother
19 them to sign the agreement.

20 If Three Rivers can disappear, you know, maybe
21 there's something they can do to make it so it can't
22 disappear and then they won't bother -- have any problem
23 with signing the agreement.

24 That part of it to me is -- is easy, okay? We
25 ought to be asking for that.

1 The next question is, if the agency is still
2 there and they're unable to provide the indemnification,
3 do we then wish to have the parent agencies step in? And
4 for my own thinking at least, if so, to what extent? And
5 that's the question. And I think that we haven't -- we
6 really don't know whether we get anything for that or not.

7 CHAIRPERSON CARTER: Okay.

8 BOARD MEMBER RIE: Ms. Cahill, how are we going
9 to handle if one of these agencies - Sutter County, Yuba
10 County, Sacramento County - what if they take it before
11 their board of supervisors and their's not enough votes to
12 sign this agreement, they vote not to sign the agreement?

13 LEGAL COUNSEL CAHILL: Well, the necessity of the
14 agreement is a condition of the permit. So, for example,
15 in the current TRLIA permit related to the agreement you
16 have coming before you today, it was a permit condition
17 that "No construction under Part B," which involves the
18 tie-ins to the federal project, "shall occur until a
19 cooperation agreement for the project that provides local
20 assurances to operate and maintain the completed project
21 and to hold harmless and indemnify the Board and the State
22 of California satisfactory to the Board is executed among
23 the Board, Three Rivers Levee Improvement Authority,
24 Reclamation District 784 and Yuba County."

25 So the way we get the local people that -- the

1 local parent agencies that formed the JPA, the way you get
2 them to sign is usually you do it before they've already
3 been constructing. And it's a condition of the permit, is
4 if you want a permit for this project that you've all come
5 together to put forward, you have to be willing to sign
6 this. And so it should be -- you know, it should be early
7 in the process.

8 BOARD MEMBER RIE: Okay. So the permit's already
9 been issued, the agreement has not been signed, there's
10 going to be different people on that board. What if their
11 current board votes not to sign it?

12 LEGAL COUNSEL CAHILL: You know, I don't want to
13 speculate. This is a permit condition. You have to
14 assume that they checked with those entities -- you're
15 right though, I guess there will be new members. But at
16 least they've signed it before and they should be aware
17 that this was a permit condition now. And I would hope
18 that they would still sign it. And if they don't --

19 BOARD MEMBER RIE: And what if they sign it but
20 they can't provide the insurance?

21 LEGAL COUNSEL CAHILL: The insurance or the
22 assurance?

23 BOARD MEMBER RIE: The insurance.

24 LEGAL COUNSEL CAHILL: We're not asking for
25 insurance. We're asking for indemnity.

1 BOARD MEMBER RIE: Okay. But don't they go hand
2 in hand?

3 LEGAL COUNSEL CAHILL: It's up to them how -- you
4 know, realistically we realize they're not -- if there's a
5 huge flood event that this is complying to, none of them
6 are going to have sufficient funds to totally cover it.
7 We realize that. But they could certainly be
8 contributing.

9 BOARD MEMBER RIE: Okay. And what about a permit
10 that is not issued and - in the case of SAFCA, SAFCA will
11 be coming before our Board in the future for permits -
12 what if their five agencies do not agree to sign the local
13 cooperation agreement?

14 LEGAL COUNSEL CAHILL: Then arguably we don't
15 give them the permit. If that's the condition of our
16 permit and they don't agree to the condition, they don't
17 get the permit.

18 BOARD MEMBER RIE: Just one of them agrees not --
19 doesn't agree to sign. Then they get no permit? It seems
20 like we're putting ourselves in a position where we're
21 discouraging people from coming forward to make
22 improvements. You know, one of those agencies is bound
23 not to sign this agreement or can't sign the agreement or
24 doesn't have the insurance or doesn't have the assets to
25 back up any sort of claims.

1 SECRETARY DOHERTY: Then they wouldn't be part of
2 the joint powers.

3 LEGAL COUNSEL CAHILL: Yeah, these are the
4 agencies that want this project. I mean they've come
5 together and formed a JPA to get the project. If they
6 don't want the project badly enough to take on some
7 responsibility for it themselves, arguably they don't get
8 the permit.

9 BOARD MEMBER RIE: Well, some of these
10 agencies --

11 LEGAL COUNSEL CAHILL: And I think
12 geographically -- I think you can sort out large agencies
13 so that you're not asking people to indemnify for a
14 project in another part of a large agency like SAFCA. I
15 mean we're treading ground here that we haven't been down
16 before. When we did it before the local agencies agreed.

17 BOARD MEMBER SUAREZ: With little information --
18 incomplete information.

19 BOARD MEMBER RIE: It seems like when we put -- I
20 don't know if it was our Board or the previous Board --
21 when they put the condition on Yuba County to sign this
22 agreement, I remember hearing things like we put the gun
23 to their head, that they didn't do it voluntarily, they
24 were forced to do it.

25 From what we're hearing today, the local cities

1 and counties entered into these JPAs because collectively
2 they could do more with flood control by being a group.
3 Individually they probably couldn't build these projects.
4 And to penalize them for coming together doesn't make
5 sense.

6 SECRETARY DOHERTY: I call for the question,
7 which means we vote on whether or not we continue
8 discussion or whether we vote.

9 PRESIDENT CARTER: Okay. There's a question on
10 the floor.

11 Mr. Punia, would you call the roll.

12 Everybody understand what we're voting on?

13 BOARD MEMBER SUAREZ: No, I don't.

14 PRESIDENT CARTER: We're voting on whether or not
15 we want to continue discussion or we want to vote on the
16 motion before us. So a "no" vote says that you do not
17 want to continue discussion and you want us to vote on the
18 motion before us. A "yes" vote says that you want to
19 continue discussion on the motion.

20 BOARD MEMBER BROWN: Wait a minute. Say that
21 again.

22 SECRETARY DOHERTY: I called for the question,
23 which means we vote on whether or not we continue the
24 discussion that we're having or whether we actually vote
25 on the motion that is before the floor.

1 So this vote that we're going to take now decides
2 whether or not we continue this discussion for another
3 hour or for however long we do it. And then the next vote
4 will be on the motion on the floor.

5 BOARD MEMBER BROWN: So a "no" vote means we vote
6 on the motion?

7 SECRETARY DOHERTY: We don't continue discussion.

8 PRESIDENT CARTER: A "no" vote means we stop
9 discussion. And the next step is a vote on the motion.

10 BOARD MEMBER BROWN: -- motion. Okay.

11 PRESIDENT CARTER: Does everybody understand?

12 VICE-PRESIDENT HODGKINS: Could we discuss
13 calling for the question?

14 (Laughter.)

15 PRESIDENT CARTER: Mr. Punia, would you call the
16 roll.

17 EXECUTIVE OFFICER PUNIA: Board Member Emma
18 Suarez?

19 BOARD MEMBER SUAREZ: Yes.

20 EXECUTIVE OFFICER PUNIA: Board Member Butch
21 Hodgkins?

22 VICE-PRESIDENT HODGKINS: Help me again. "No"
23 means we --

24 SECRETARY DOHERTY: -- we stop.

25 PRESIDENT CARTER: -- stop discussion

1 VICE-PRESIDENT HODGKINS: Yes.

2 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

3 BOARD MEMBER RIE: Yes, we should continue the
4 discussion.

5 EXECUTIVE OFFICER PUNIA: Board Member John
6 Brown?

7 BOARD MEMBER BROWN: No.

8 EXECUTIVE OFFICER PUNIA: Board Member Maureen
9 Doherty?

10 SECRETARY DOHERTY: No.

11 EXECUTIVE OFFICER PUNIA: Board President Ben
12 Carter?

13 PRESIDENT CARTER: No.

14 So we continue discussion.

15 (Laughter.)

16 PRESIDENT CARTER: Okay. Go ahead, Mr. Hodgkins.

17 VICE-PRESIDENT HODGKINS: We can't do what we did
18 with the fence. We may already have done it.

19 But I think that there are two issues that at
20 least clarifying would help me and might help Ms. Suarez.
21 I don't know. And maybe the rest of you or maybe not.

22 The second one is the more important one, which
23 is, given the provisions of state law about tort acts,
24 what kind of claims are we not protected from even if we
25 don't make the parent agencies sign this agreement? And

1 I'd like to have -- I know Ms. Cahill doesn't need any
2 more work. But I would like to have her work with Ward
3 and come back to the Board with that, because I'm helpless
4 to understand what issues there are that were not covered
5 from through piercing under the state law the JPA veil.
6 It may be we don't have to get them to sign anything and
7 we're covered, period. Okay?

8 And the second one we will fight out at the next
9 meeting, which is whether or not we make the parent
10 agencies provide assurances that they will accept the
11 indemnification in the event of dissolution of the JPA.
12 But we can figure that out next time. And let us get on
13 with the rest of our stuff and come back with a little
14 more information.

15 Well, that's my suggestion.

16 SECRETARY DOHERTY: Of course we've got a motion
17 on the floor too.

18 PRESIDENT CARTER: We do have a motion on the
19 floor. So we'll have to either vote on that or table it.
20 If we want to table this item, we can also table the
21 motion until we continue the discussion.

22 VICE-PRESIDENT HODGKINS: I'd be very agreeable
23 to doing that.

24 PRESIDENT CARTER: Any objections?

25 VICE-PRESIDENT HODGKINS: I think this is

1 important enough to take a little more time and do a
2 little more research on it. We've already learned a lot,
3 at least that I didn't know coming in here.

4 PRESIDENT CARTER: Any objections?

5 So you've made a motion to table this item and
6 get some more --

7 VICE-PRESIDENT HODGKINS: I did so make, yes.

8 PRESIDENT CARTER: Okay. A second?

9 SECRETARY DOHERTY: Sure. Let's do it.

10 PRESIDENT CARTER: Second.

11 BOARD MEMBER BROWN: It's a table of a motion,
12 not the item?

13 PRESIDENT CARTER: To table -- no, to table --

14 BOARD MEMBER BROWN: The motion's still on the
15 floor.

16 PRESIDENT CARTER: I think the motion is to table
17 the motion and the item --

18 BOARD MEMBER BROWN: Okay.

19 PRESIDENT CARTER: -- and continue at a future
20 meeting.

21 VICE-PRESIDENT HODGKINS: That's correct.

22 SECRETARY DOHERTY: That's fine.

23 PRESIDENT CARTER: And that's seconded?

24 SECRETARY DOHERTY: That's fine.

25 PRESIDENT CARTER: Any discussion?

1 BOARD MEMBER SUAREZ: I just want to make sure
2 that Ms. Cahill is clear about some of the questions that
3 we have.

4 You mentioned the issue of tort -- piercing
5 through a tort, what was the situation; can we pierce
6 through an inverse condemnation; and what happens --
7 future-looking after the entity has disbanded, how does
8 the liability still flow? Because I'm sure it still
9 flows. But how, under common law theories, under what
10 theories do we still find?

11 PRESIDENT CARTER: Okay. Do you --

12 LEGAL COUNSEL CAHILL: Yes, I think I have --
13 yes, thank you.

14 PRESIDENT CARTER: Ms. Cahill, do you have any
15 other questions?

16 LEGAL COUNSEL CAHILL: No.

17 PRESIDENT CARTER: Any clarifications?

18 LEGAL COUNSEL CAHILL: I think the Board's --

19 PRESIDENT CARTER: Okay. Mr. Punia, would you
20 call the roll, please.

21 EXECUTIVE OFFICER PUNIA: Board Member John
22 Brown?

23 BOARD MEMBER BROWN: Aye.

24 EXECUTIVE OFFICER PUNIA: Board Member Maureen
25 Doherty?

1 SECRETARY DOHERTY: Yes.

2 PRESIDENT CARTER: Lady Bug votes yes.

3 EXECUTIVE OFFICER PUNIA: Maybe I confused her by
4 not saying Lady Bug.

5 Board Member Emma Suarez?

6 BOARD MEMBER SUAREZ: I think it's yes.

7 EXECUTIVE OFFICER PUNIA: Board Member Butch
8 Hodgkins?

9 VICE-PRESIDENT HODGKINS: Yes.

10 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

11 BOARD MEMBER RIE: I think I'm voting yes. To
12 table this item?

13 SECRETARY DOHERTY: Um-hmm.

14 BOARD MEMBER RIE: Okay. Yes.

15 EXECUTIVE OFFICER PUNIA: Board President Ben
16 Carter?

17 PRESIDENT CARTER: Yes.

18 Motion carries unanimously.

19 All right, ladies and gentlemen. We need to --

20 MR. SHAPIRO: President Carter, if I could beg
21 your indulgence.

22 The next item relates to and assumes the Board
23 handled this item. Would it be appropriate for a
24 five-minute break for Ms. Cahill and I to confer about how
25 to handle it?

1 BOARD MEMBER SUAREZ: Can't you table it too?

2 MR. SHAPIRO: We can't.

3 EXECUTIVE OFFICER PUNIA: I think it's late. We
4 need to hear it.

5 MR. SHAPIRO: We're going to construction.

6 BOARD MEMBER SUAREZ: I'm sorry?

7 MR. SHAPIRO: We're going to construction. We
8 can't table it.

9 PRESIDENT CARTER: So you don't want to table
10 this item but you do want to confer in terms of how to
11 handle it?

12 MR. SHAPIRO: If that's possible. Five-minute
13 break.

14 PRESIDENT CARTER: You want the Board to take
15 action?

16 MR. SHAPIRO: Yes, please. But a five-minute
17 break I think would lend some clarity. And I believe we
18 can come up with a joint proposal that would be acceptable
19 to the Board.

20 PRESIDENT CARTER: Okay. Let's take a
21 five-minute break.

22 (Thereupon a recess was taken.)

23 PRESIDENT CARTER: Ladies and gentlemen, we're
24 only three and a half hours behind. So let's get rolling
25 here.

1 Item 11, Cooperation Agreement, Three Rivers
2 Levee Improvement Authority, Feather River Repair Project,
3 Segment 2 Feather River Setback Levee.

4 This is to consider approval of a cooperation
5 agreement among the Board, Three Rivers Levee Improvement
6 Authority, Yuba County, and Reclamation District 784 for
7 the Segment 2 of the Feather River Setback Levee Project.

8 Ms. Cahill.

9 LEGAL COUNSEL CAHILL: Okay. The staff report
10 provided you with two draft agreements with Three Rivers
11 and its members, depending on what action you took in the
12 last item.

13 Given that there hasn't been the policy decision
14 made yet, the staff recommendation - and I believe that
15 counsel for Three Rivers concurs in this - is that you
16 adopt the agreement that includes Yuba County. I have one
17 correction I'd like to make, which is in section 4,
18 Indemnification, we take out the word "each" and we add
19 "jointly and severally". It's a more legalese term.

20 SECRETARY DOHERTY: You're looking at the second
21 one?

22 LEGAL COUNSEL CAHILL: We're looking at the
23 second one, the one that includes the county, on page 7 we
24 take out "each" and add "jointly and severally".

25 And our agreement with Three Rivers, if you adopt

1 it, would be that after the Board sets a policy, if it's
2 inconsistent with this agreement, you could revisit it.
3 You're not -- you wouldn't agree to any particular results
4 ahead of time. But if you later form a policy that's
5 inconsistent, you would at least reconsider this one.

6 And on that basis we would recommend approval of
7 the agreement.

8 And I think Mr. Shapiro would like to address
9 you.

10 BOARD MEMBER BROWN: I have a question on that,
11 Mr. Chairman.

12 PRESIDENT CARTER: Go ahead, Mr. Brown.

13 BOARD MEMBER BROWN: On Item B, on page 7 of that
14 agreement, it says "...then the Board or Government may
15 perform the necessary work with their own forces or by
16 contract."

17 Shouldn't we add something like "...and bill the
18 District and Three Rivers for services performed," if we
19 go ahead and do it on our own contract and they're
20 responsible?

21 LEGAL COUNSEL CAHILL: Yes, that would be a
22 proper addition.

23 BOARD MEMBER BROWN: Is that all right?

24 LEGAL COUNSEL CAHILL: Scott?

25 MR. SHAPIRO: President Carter, members of the

1 Board. I can't tell you whether that's going to be all
2 right with the agencies. It's not been included in any of
3 these that we've ever signed before. I believe the reason
4 that it's not included is if you do the work, it's because
5 you formed a maintenance area, in which case you bill the
6 residents, not the public agencies. But we've never
7 signed one and I've never negotiated one for any other
8 agency that had that provision in there.

9 So I think it's -- I think the reason is because
10 of this issue that you have the power under state law to
11 do the work and bill the residents instead of trying to
12 bill another public agency that then has to raise the
13 money from the residents and is subject to Prop 218. You
14 have more flexibility to bill them yourself and raise the
15 money than we do as local agencies.

16 BOARD MEMBER BROWN: I bow to our legal counsel
17 on that.

18 LEGAL COUNSEL CAHILL: Mr. Punia, that would be
19 correct, wouldn't it? For operation and maintenance we
20 could form a maintenance area if necessary?

21 EXECUTIVE OFFICER PUNIA: That's correct. If
22 we're not satisfied what the local agency's doing, then
23 the Department can recommend, then the Board can approve
24 to make a maintenance area.

25 LEGAL COUNSEL CAHILL: I think we can live with

1 this. I think it's important to get this contract done
2 today.

3 PRESIDENT CARTER: Any other discussion,
4 questions?

5 MR. SHAPIRO: President Carter, if I could just
6 put my two quick notes on the record.

7 PRESIDENT CARTER: Yes.

8 MR. SHAPIRO: I appreciate your patience.

9 And being very quick, we do agree with the change
10 that Ms. Cahill indicated of changing "each" to "jointly
11 and severally". We are in agreement with proceeding.
12 Just so you understand, it's because the permit doesn't
13 allow us to do work in 404 jurisdictional areas now. And
14 before the next Board meeting we will have a 404 permit.
15 And so this will open up another area for us to work by
16 getting this dealt with now. That's why it's important it
17 be dealt with this month and not next month.

18 Also, we actually have had two board members turn
19 over in this last election on the county board of
20 supervisors. So this may be an interesting test of the
21 issue that Ms. Rie raised of what's going to happen. I
22 can't guaranty for you the county will necessarily sign
23 this.

24 And I do just want it on the record that we're
25 agreeing to this with the understanding that if you adopt

1 a policy which would allow a different consideration, that
2 we can come back. It doesn't mean you'll decide
3 differently, but it means we can speak to the issue.

4 And with that understanding, I appreciate your
5 time. And we would ask for you to approve this.

6 PRESIDENT CARTER: Okay. Any other discussion?
7 Questions?

8 Do I have a motion?

9 BOARD MEMBER BROWN: I'll move approval, Mr.
10 Chairman, on that basis.

11 LEGAL COUNSEL CAHILL: And could you make it
12 approval in substantially this form. That way if we find
13 some small typo or something, we don't have to come back
14 to the Board.

15 BOARD MEMBER BROWN: I'll add that to the motion.

16 PRESIDENT CARTER: Okay.

17 SECRETARY DOHERTY: I'll second it.

18 PRESIDENT CARTER: And we have a second.

19 Any further discussion?

20 BOARD MEMBER SUAREZ: I just -- can somebody
21 again clarify to me what it is that we're doing. We're
22 approving this with -- and you're going to try to get the
23 signatures of Yuba and the Reclamation District?

24 MR. SHAPIRO: If you approve this, the Three
25 Rivers Board will approve this at its next meeting. And

1 it will take it to Yuba County and RD 784 for approval.
2 Our hope is they'll approve it. I've given the caveat to
3 you that their board has changed. And while they are very
4 eager to do flood protection, and in fact have put a lot
5 of energy into it, I just can't tell you that they'll
6 agree because it's different people than it was eight
7 months ago. And we're requesting that in the event you
8 adopt a policy which would allow a different result, that
9 we come back at a future month and reform the contract if
10 you decide in your discretion to do so.

11 BOARD MEMBER BROWN: Mr. Chairman?

12 PRESIDENT CARTER: Yes.

13 BOARD MEMBER BROWN: I'd like to amend my own
14 motion, if I may.

15 On that basis, I think we ought to put a limit.
16 I don't want a contract out there that's signed by us or
17 agreeable to us that's open for the next six months. So
18 what's an appropriate time?

19 MR. SHAPIRO: Perhaps two months after you adopt
20 a policy.

21 BOARD MEMBER BROWN: All right. I'll add that,
22 that this motion is based upon the assumption that the
23 contract would be valid and signed within two months from
24 today.

25 MR. SHAPIRO: Mr. Brown, it would be within two

1 months -- I thought you were asking how long we would have
2 to come back and ask you to change the contract if you
3 adopted a different policy, in which case we would request
4 that it be within two months of you adopting that policy.
5 You haven't adopted a policy today to start the clock
6 running.

7 LEGAL COUNSEL CAHILL: I think you two are
8 talking across purposes. I think Member Brown's question
9 was, how soon do you anticipate that this contract will be
10 signed? And under your permit, it has to be signed before
11 you start any of the Phase B work.

12 BOARD MEMBER BROWN: And we do not want our
13 contract signed and out there for the next six months.

14 MR. SHAPIRO: Indeed. And I assume this will be
15 handled the way most of yours are, which is you authorize
16 your President to sign it and then we go and get
17 signatures and bring a signed contract for you to sign. I
18 don't recall ever bringing a blank contract for you to
19 sign, which we then go try to get signature for.

20 PRESIDENT CARTER: That's typically been the
21 process.

22 BOARD MEMBER BROWN: That's acceptable.

23 PRESIDENT CARTER: Okay. So your motion is for
24 approval in substantially the form as presented to us
25 today, with the "each" changed to "jointly and severally".

1 BOARD MEMBER BROWN: In that case, the motion is
2 to grant you the authority to approve it.

3 LEGAL COUNSEL CAHILL: The Board approves it and
4 grants the President the authority the execute it.

5 PRESIDENT CARTER: To sign it, yeah.

6 BOARD MEMBER BROWN: That's it.

7 LEGAL COUNSEL CAHILL: And it's the one that
8 includes Yuba County. You want to be specific which
9 agreement.

10 SECRETARY DOHERTY: So page 6.

11 PRESIDENT CARTER: Okay. Any questions?

12 BOARD MEMBER RIE: Where are we making changes on
13 this agreement?

14 PRESIDENT CARTER: Ms. Cahill.

15 BOARD MEMBER RIE: What page is that?

16 PRESIDENT CARTER: I think it's page 6.

17 LEGAL COUNSEL CAHILL: Page 7 of the agreement
18 that includes Yuba County, at the very bottom, Section 4,
19 Indemnification.

20 A. "Three Rivers, County, and District shall" --
21 and instead of "each" we put "jointly and severally".
22 That was always the intent.

23 BOARD MEMBER RIE: So it's 3B?

24 LEGAL COUNSEL CAHILL: No, it's 4A.

25 Three relates only to operation and maintenance.

1 Four relates to indemnification.

2 SECRETARY DOHERTY: And it has to be signed
3 within two months?

4 PRESIDENT CARTER: No.

5 BOARD MEMBER BROWN: It gives our Chairman the
6 authority to sign it.

7 PRESIDENT CARTER: Any other questions?

8 Okay. We have a motion.

9 And the second still stands?

10 SECRETARY DOHERTY: Yes.

11 PRESIDENT CARTER: Okay. Very good.

12 Mr. Punia, would you call the roll, please.

13 EXECUTIVE OFFICER PUNIA: Board Member John
14 Brown?

15 BOARD MEMBER BROWN: Yes.

16 EXECUTIVE OFFICER PUNIA: Board Member Maureen
17 Doherty?

18 SECRETARY DOHERTY: Yes.

19 EXECUTIVE OFFICER PUNIA: Board Member Emma
20 Suarez?

21 BOARD MEMBER SUAREZ: Yes.

22 EXECUTIVE OFFICER PUNIA: Board Member Butch
23 Hodgkins?

24 VICE-PRESIDENT HODGKINS: Yes.

25 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

1 BOARD MEMBER RIE: Yes.

2 EXECUTIVE OFFICER PUNIA: Board President Ben
3 Carter?

4 PRESIDENT CARTER: Yes.

5 Motion carries unanimously.

6 Thank you very much.

7 MR. SHAPIRO: Thank you, Mr. Carter.

8 And Happy Thanksgiving to all of you.

9 PRESIDENT CARTER: Thank you.

10 Okay. It's time for a break for lunch. Let's
11 see. We've already done that.

12 (Laughter.)

13 PRESIDENT CARTER: So we'll move on to Item 12,
14 Sutter Bypass Resolution. This is to consider approval of
15 a revised Resolution No. 08-19 directing staff to address
16 various issues associated with the Sutter Bypass.

17 This is an item that came before the Board last
18 month. And the Board asked staff to go back and develop a
19 resolution that reflected its desire at the time.

20 Ms. Cahill.

21 LEGAL COUNSEL CAHILL: You know, I think actually
22 it's up to the Board to look to see whether this
23 resolution does in fact reflect its intent. I don't have
24 a presentation on this one. It was in your packet. And
25 hopefully the Board members have reviewed it and decided

1 whether this is in fact what you want staff to do.

2 BOARD MEMBER SUAREZ: Mr. President?

3 PRESIDENT CARTER: Yes ma'am.

4 BOARD MEMBER SUAREZ: I have a suggestion just
5 from this morning's presentation from DWR. There was a
6 reference regarding the analysis -- what was it, the flow
7 analysis, the one --

8 PRESIDENT CARTER: Hydraulic analysis.

9 BOARD MEMBER SUAREZ: Thank you.

10 And there was a discussion about doing a
11 two-dimensional analysis. And DWR indicated that they are
12 interested in doing that, funding being made available.
13 So I thought maybe the resolution might reflect something
14 to the effect -- to that, you know, funding permitting,
15 the staff should work with DWR on that two-dimensional --

16 SECRETARY DOHERTY: I thought it was in there

17 PRESIDENT CARTER: Item 4 --

18 BOARD MEMBER SUAREZ: Right. But with the
19 funding permitting kind of notice there, since it's an
20 issue that they raised. That would be my only comment.

21 SECRETARY DOHERTY: I would like to make just a
22 couple of comments.

23 Is that, first of all, we're in violation of PL
24 84-99 and not getting funds by not keeping this as a flood
25 conveyance so the water can flow freely.

1 And then the other thing that troubles me is
2 that, last month we had a person that came before us and
3 wanted to alter the bypass in a very, very, very moderate
4 way, nothing above -- existing above three feet, some
5 mounds, three trees, constant maintenance. But yet we
6 have a situation here that changed the whole physical
7 picture of the Sutter Bypass without a permit. And I
8 don't know that we want that to continue.

9 And I think that we might ask -- since Fish and
10 Wildlife has caused this to happen, perhaps they would be
11 responsible for the 2D model, or at least we could ask
12 them to help, because they need to prove to us now what
13 the design flow is. Are we at full carrying capacity?

14 So that's just a suggestion. I don't know
15 whether we want to include that in this or not.

16 PRESIDENT CARTER: I think I -- in consideration
17 to your point, Emma, I do think funding is a concern. The
18 feedback I've received from the Corps experts -- we had
19 testimony from Joe Countryman last month that said that
20 the two-dimensional model is the appropriate tool to use
21 in this kind of situation. A Two-dimensional model was
22 developed for the Yolo Bypass for the same reasons we're
23 talking about here. And the reason is that the
24 one-dimensional model, they -- I'm not a hydraulic
25 engineer. But they claim that a one-dimensional model as

1 a tool for this kind of a situation is not robust enough
2 to reflect accurately -- as accurate as models can be the
3 flow dynamics.

4 So I hesitate to make it contingent upon funding
5 available. I think that we need to figure out how we can
6 make this work. And the hope is that there will be funds
7 available. Hopefully we can get DWR to help. Perhaps we
8 can get the Corps to help. Perhaps we -- and maybe DWR's
9 funds come from the fact that we're doing a Central Valley
10 Flood Protection Plan. And in order to do a plan and
11 understand what we need out there, they really need to
12 understand some hydraulics as well.

13 And we have opened the door with the Fish and
14 Wildlife Service and asked for their cooperation in
15 regards to developing and -- developing a tool, a
16 hydraulic model for that.

17 So I'd kind of prefer to not make it -- not
18 contingent on or subject to funding availability.
19 Although that is the reality. I mean it won't happen
20 until there are funds available. But I think it's
21 important that we try and put all of our effort towards
22 trying to make this happen.

23 So that's just a perspective.

24 BOARD MEMBER BROWN: I've got a question for Mr.
25 Hodgkins, who's cleaned out a lot of channels in his

1 professional career.

2 Why do we need a model in the first place to do
3 maintenance out there?

4 VICE-PRESIDENT HODGKINS: I think this is a
5 situation where -- you know, clearly if you cut down all
6 of the trees, if it looked like that picture we saw in
7 1914, there couldn't be much question if it didn't pass
8 the flow, then it was a design error.

9 I think in this case, there's one side of the
10 channel that's heavily vegetated, and the -- in effect,
11 the way we have now of telling somebody the maintenance is
12 adequate is to look at the water level after a storm and
13 compare it to the design. And if it's lower, it's
14 adequate. And if it's higher, it's not.

15 That's not a good way to do business in the
16 future. It's a long time between these big storms. And
17 so the idea here would be to develop a tool that would
18 help us to be able to look Fish and Wildlife in the eye or
19 the local agencies and say either it's not adequate or it
20 is adequate. If it's not adequate, more has to be
21 removed. There's Endangered Species Act issues associated
22 with that. We need the Service's help. If it is
23 adequate, we need to be able to convince the local
24 agencies that it is.

25 And I think a two-dimensional tool is, for me at

1 least, a way where I would be very comfortable with the
2 results.

3 BOARD MEMBER BROWN: Okay.

4 PRESIDENT CARTER: A couple members of the public
5 wanted to address the Board on this item.

6 Mr. Akin.

7 MR. AKIN: President Carter, members of the
8 Board. I live in the Sutter Basin, Robbins area of the
9 Sacramento Valley.

10 PRESIDENT CARTER: Would you please introduce
11 yourself just for the record.

12 MR. AKIN: Oh, okay. Dick Akin, 5374 Del Monte
13 Avenue, Robbins, California.

14 I live in the Sutter Basin. The east boundary of
15 the area that I live in is the Sutter Bypass. And one of
16 the things that we have to remember, the primary -- the
17 only reason the Sutter Bypass was ever constructed was for
18 flowage, that would reduce the flow out of the Sacramento
19 River through the center of the valley, so that we could
20 get water through here, that not only protects north of
21 Sacramento but it also protects Sacramento.

22 The things that have been done in the Sutter
23 Bypass by Fish and Wildlife flies in the face of all the
24 easements that were placed on those properties that was
25 purchased by the private sector in the past. It was

1 required -- and it's on all the deeds owned by the private
2 sector, and I think it's probably on the deeds of the
3 property that's owned by Fish and Wildlife -- that if you
4 do not maintain the flood control portion of that Sutter
5 Bypass, that the Bureau of Reclamation has a right to come
6 in and remove those trees and charge the landowners for
7 the removal of the debris or whatever to keep the design
8 flood control process going.

9 With the planting of the tules and the allowing
10 of the trees to grow in the Fish and Wildlife sector
11 there, it has really changed and altered the flow of the
12 Sutter Bypass. And I know you've heard these arguments
13 many, many times. But it's one of the things that you
14 really have to consider here.

15 This resolution is a step in the right direction.
16 But it does not go quite far enough. And as Lady Bug said
17 earlier, one of the main things that you have to do --
18 Fish and Wildlife needs to come and present a plan and
19 they need to -- should be required to get permits to do
20 the work that they do within the Sutter bypass.

21 And you don't have to move dirt to change and
22 alter the flow of that system. Tules is like throwing a
23 dam in the middle of that bypass. Trees do the same
24 thing. And I think that anything that you do there, Fish
25 and Wildlife in the intent of this resolution has to make

1 them live by the same standards, the same thing that the
2 private sector has to live with.

3 And the other thing for you people down here in
4 the Sacramento area to consider is at any time you have a
5 jump in the water level in that bypass system, even though
6 it's 40 miles away, 50 miles away, you're going to have
7 higher water levels for a longer period of time in
8 Sacramento after a flood event because it's going to take
9 longer for that water to get here.

10 And so don't sit here thinking that because I
11 live in Sacramento and this is 40 miles away, that it's
12 not going to affect you. It will. And engineers will
13 tell you that that is the case.

14 That's all I have to say. Thank you.

15 PRESIDENT CARTER: Thank you, Mr. Akin.

16 Mr. Swanson.

17 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Good
18 afternoon. Keith Swanson, Chief of the Flood Maintenance
19 Branch.

20 I guess I want to express my concerns for the
21 requirements and the expectations associated with a
22 two-dimensional model.

23 I think we need some flexibility as a manager to
24 set our priorities. And right now we have a lot of
25 deferred maintenance out in the system. And, you know,

1 our priority is trying to get through that work. And
2 we're basing a lot of our decisions at this point on a
3 one-dimensional model.

4 Now, a two-dimensional model represents a gold
5 standard. And I'd love to have that level of
6 sophistication throughout the system. But, you know, it
7 comes with a cost and -- you know, we haven't come up with
8 a dollar figure yet. But, you know, numbers of 500,000
9 have been thrown out there. That's a lot of money, and
10 that money -- you know, we have to ask about the
11 prioritization, spending that money to do the modeling
12 versus, you know, one dimensional models on other parts of
13 the system or on-the-ground activity, buying machinery,
14 that kind of thing.

15 My program likely would be looked at as a funding
16 source for the modeling. We might be able to find more
17 partners, and that would be great. Because, like I say,
18 this is the gold standard and we'd love to have it. But
19 the question is, you know, about priorities.

20 The Sacramento River Flood Control Project, if
21 you consider the Butte Basin, is 300,000 acres. We have
22 models on some of it. We don't have models on a lot. Our
23 goal is to develop models down the road to help us make
24 the right decisions. We've got buy-in from the Corps that
25 modeling is the way to determine the effectiveness and the

1 need -- the effectiveness of vegetation management and
2 sediment management. And that's how we should be making
3 our decisions.

4 We're going to continue to work on deferred
5 maintenance. There's a lot out there. We've been making
6 a lot of progress in the last number of years. And we've
7 done a lot out in the Sutter Bypass and we're going to
8 continue that. We were in front of you last Board meeting
9 and we identified I think it was about five sites where we
10 are actively working on and need to do more work. And so
11 we are going to continue with that. And that's regardless
12 of whether we do a 2D model or a 1D model.

13 So I guess I'd ask for your support to allow us
14 to prioritize the work. And we would really like the
15 ability to implement the 2D as funding becomes available,
16 as we talk about prioritizations and we look at, you know,
17 the best utilization of our money, and we don't just
18 fixate on the model and thinking that the model is going
19 to resolve our problems when really it's work out in the
20 field that needs to be accomplished.

21 BOARD MEMBER BROWN: Five hundred thousand
22 dollars to develop a 2D model, do you think?

23 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

24 That's the number I heard on the Yolo Bypass. I
25 think it was 600,000. And there's probably people here

1 that have a better feel for that. It's expensive.

2 BOARD MEMBER BROWN: You have work that you're
3 doing right now on that bypass?

4 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes,
5 yes.

6 BOARD MEMBER BROWN: What?

7 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
8 We're mowing vegetation. We've had shredders out
9 there working. We've been working -- you know, disking
10 tules down. And we have additional areas that we need to
11 work. But we've been working in the bypass probably for
12 about the last seven years, really addressing deferred
13 maintenance that has, you know, resulted from lack of
14 maintenance occurring in the late eighties in through the
15 nineties. There was a long period of deferred maintenance
16 that was occurring.

17 BOARD MEMBER BROWN: I understand Mr. Hodgkins'
18 response to my question a while ago and appreciate his
19 knowledge and experience in that area. But it also begs
20 the question, if we know what maintenance needs to be
21 done, why do we need to substantiate it? Are you
22 expecting some objections from Fish and Wildlife or Fish
23 and Game that we need to justify? Do we need a permit
24 from those people to do maintenance?

25 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.

1 BOARD MEMBER BROWN: Do you have a permit to do
2 maintenance?

3 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: For
4 the work that we're doing we work in conjunction with Fish
5 and Game, and then we structure the work to minimize some
6 of our federal permit applications.

7 BOARD MEMBER BROWN: In your opinion, what else
8 would you like to do other than what you're programmed to
9 do that we're going to need a model to support our
10 position with Fish and Wildlife?

11 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
12 Well --

13 BOARD MEMBER BROWN: What do you want to remove,
14 some trees or --

15 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
16 We're currently thinning trees, removing --

17 BOARD MEMBER BROWN: You're thinning trees now?

18 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
19 -- moving trees. When we're working on the Fish
20 and Wildlife's property, we've been working under their
21 existing permits. We've been working cooperatively with
22 them. They've been doing some of the work. We've been
23 augmenting their forces to accelerate the work that's
24 being done.

25 BOARD MEMBER BROWN: When you're through are we

1 going to have capacity that you think is necessary?

2 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

3 Well, right now based on a one-dimensional model,
4 we think that we're able to pass the '57 flows at the '57
5 profile. Now, there's a question because there's a
6 difference between the '57 profile and flows and the O&M
7 profile and flows. And based on our one-dimensional
8 model, we would have to clear every bit of vegetation out
9 of the channel to pass the design flows that are in the
10 O&M manual at the specified levels of freeboard. And I
11 think we even encroach on that six-foot level of
12 freeboard.

13 And if you remove every stitch of vegetation out
14 there, then you open yourself up to erosion problems on
15 the levees because the Corps never rocked those levees
16 even though it was included in the addendum to the '52
17 memorandum of understanding. One of the items that was
18 supposed to have occurred was rocking up the bypass
19 levees. That didn't occur. So now we have the tree lines
20 that are on the east and west --

21 BOARD MEMBER BROWN: So you'd probably leave the
22 tree line, but the rest of it you could go ahead and clear
23 if you do it or --

24 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

25 Well, that's what we're working toward and that's

1 what we've been doing. We've been opening up the center,
2 and that's our primary goal right now. And we've been
3 making progress on that. And, you know, you go and you
4 remove things and you thin things up. And then you come
5 back and you spray afterwards and you, you know --

6 BOARD MEMBER BROWN: Is Fish and Wildlife all
7 right with this?

8 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
9 They're working with us. They're working with
10 us.

11 BOARD MEMBER BROWN: This really begs the
12 question, why do we need to do that model then?

13 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
14 Well, long term we would do the model. Long term
15 I think. It's a -- because it does provide you that high
16 level of understanding of localized buildup in water
17 mounds and things like that. And so long term we'd do it.
18 But, you know, it's the gold standard. And, you know, we
19 have a system that was designed with slide rules and, you
20 know, hand calculations. And so it's -- you know, I don't
21 necessarily know that we need --

22 BOARD MEMBER BROWN: Well, if you can clear out
23 the center of the channel and the only for the most part
24 that's remaining is the bank stabilization practices, it
25 seems to me like you're kind of -- got your program laid

1 out for you, regardless of what the model tells you.

2 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: I
3 think we have a number of years' worth of work. You know,
4 there is --

5 PRESIDENT CARTER: If I may, Mr. Brown. There is
6 a fundamental difference in opinion in terms of how much
7 maintenance ought to be done. And if you read the Fish
8 and Wildlife's conservation plan for the Sacramento Valley
9 refuge system, of which the Sutter National Wildlife
10 Refuge is, they do not have any intention of removing
11 those trees in that --

12 BOARD MEMBER BROWN: From the banks?

13 PRESIDENT CARTER: No, inside the channel. And
14 you missed the tour. We drove through those -- the old
15 growth areas there as well as some others. So there is
16 a -- there is a fundamental difference in terms of how
17 much -- how far the maintenance should go. And in fact
18 Fish and Wildlife is saying that you don't need to go that
19 far. DWR would like to go further. And they have made a
20 lot of progress in cooperation with the Fish and Wildlife
21 Service to date. But there still remains the fundamental
22 question, how far do you have to go? And that's -- and
23 without some sort of a scientific tool to convince them
24 otherwise, they're not going to allow us to clear any more
25 than what their conservation plan calls for, even though

1 we've commented on the plan. So I mean that's the reality
2 of the situation.

3 SECRETARY DOHERTY: May I weigh in a little bit
4 too?

5 PRESIDENT CARTER: Yes.

6 SECRETARY DOHERTY: They didn't ask you to take
7 the trees down adjacent to the levees. It was -- the
8 primary place that they wanted was the old grove. Now,
9 instead of cutting a tree in the old grove, you went down
10 to where the second weir was and you did some clearing
11 there. That wasn't a problem down there. The problem was
12 up where the break was.

13 The tules have been allowed to grow, even though
14 a match could have been thrown out there and it wouldn't
15 have cost you anything. They said the tractor got lost
16 out in the tules this year, they were so tall. And I did
17 see them. And I'm sorry everybody didn't get to go. But
18 I think we do have a residual problem out there.

19 Mike Peters, who is with the Fish and Wildlife,
20 on our tour was so surprised because of the residual
21 moisture there all summer long. They cleared a little bit
22 of the brush in the old grove area, and the growth was
23 already like this. I took pictures -- and I've got
24 pictures here, if anybody wants to see them -- three weeks
25 ago. And it just shows the growth is tremendous. And

1 it's not going to stop. And so until we get this under
2 control, I think we do need to know what the carrying
3 capacity of the bypass is.

4 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

5 Well, I certainly won't argue that it's an
6 ongoing process to maintain these channels and it's an
7 ongoing process to change them from, you know, a
8 particular habitat type to another habitat type. And
9 you've got to follow up -- you go out there and you cut
10 stuff, then you've got to follow up and spray it and then
11 you've got to go and cut it again. And, you know,
12 eventually you do get it under control.

13 The question about, you know, the amount of work
14 up at the old growth is probably a valid question and it's
15 something that we'll continue to be working with. The
16 Fish and Wildlife, you know -- but there's other areas in
17 the bypass also that we have work, and those are probably
18 higher priority for us. And that's on-the-ground work
19 that, you know, we're anxious to do and we're working
20 toward it. That along with all the other channels that we
21 have.

22 SECRETARY DOHERTY: If anybody wants to see the
23 Sutter Bypass, go to the website "Family Water Alliance,"
24 and they have a list of things that you can see. And one
25 of them is "Our rivers in danger." And it shows the

1 Sutter Bypass in this film. And you can access it at home
2 on your own computer. It's quite good. And you'll see
3 where the blockage is.

4 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: And
5 look at the satellite photos, and you'll see that, you
6 know, a lot of the bypass is in fact open and a lot of
7 it's --

8 SECRETARY DOHERTY: Above and below that area is
9 open, but not in this area.

10 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

11 Well, we have areas down in Nelson Bend that, you
12 know, are still a challenge. And we actively maintain
13 areas up at Highway 20 that, you know, we have to go in
14 every year and do work. And --

15 PRESIDENT CARTER: This particular area is not
16 the only area of concern. But it's probably the area of
17 greatest challenge because Fish and Wildlife has a
18 proprietary interest in that particular piece of property.

19 Anything else, Mr. Swanson?

20 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: No.
21 Thank you.

22 PRESIDENT CARTER: Okay. Any other questions,
23 comments?

24

25 THE WITNESS: I didn't put a card, but some of

1 the things that --

2 PRESIDENT CARTER: Please approach.

3 MR. CLEVELAND: Stan Cleveland, Sutter County
4 Board of Supervisors.

5 I think there's also another issue. We're
6 dealing with the '57 modeling. And I think there's
7 another issue here. The State of California has decided
8 that global warming is a top priority issue to address
9 also. And if we have higher flows coming down through the
10 Sacramento, are we going to need to up that modeling,
11 allow for more flowage?

12 Sorry. I'm a little nervous.

13 And I did send -- oh, sorry. I should have said
14 thank you for letting me speak, President Carter and
15 Board.

16 But I did send a letter thanking you for
17 addressing this and mentioning this in my letter, stating
18 that this is also something that is coming up to we're
19 going to have -- in all projects that we do in the State
20 of California that deal with water, we're going to have to
21 address, almost as a mandate, global warming in it. And
22 so we're going to need a higher level of flowage there.
23 And to me it may be -- I don't like it either. I like the
24 refuge. It's beautiful. I've been there. In fact, with
25 Lady Bug I was there. And I think Wally Herger and a few

1 others.

2 But being in that place, it will cause us -- and
3 it will make an inability to make those increased flowages
4 if it remains the way it is, and cause higher level of
5 hydrological back-up in that location where it did blow
6 out already. So I think this is something we need to
7 address also in the modeling and in the future dealing
8 with this.

9 Thank you.

10 PRESIDENT CARTER: Thank you.

11 Any other questions?

12 Further discussion?

13 Do we have a motion?

14 SECRETARY DOHERTY: I'd like to make a motion
15 that we adopt the resolution regarding Sutter Bypass, No.
16 2008-19.

17 PRESIDENT CARTER: Okay. Is there a second?

18 VICE-PRESIDENT HODGKINS: I'll second.

19 PRESIDENT CARTER: We have a second.

20 Any further discussion?

21 VICE-PRESIDENT HODGKINS: This basic question,
22 cost versus the immediate benefits of use of that money
23 for something else. Is the Board interested in at least
24 getting an estimate of the cost of this? Or are we
25 accepting the fact that DWR is going to prioritize how

1 they come up with the money to do this? I think those are
2 two issues that are sort of not addressed here.

3 SECRETARY DOHERTY: I think, Butch, that the idea
4 was that they would approach the Fish and Wildlife
5 Service, because the onus is on them to prove that
6 everything is just hunky-dory. And so I think that
7 perhaps if we can get them and the Corps and DWR to go
8 along, that would split the cost.

9 PRESIDENT CARTER: I think it's --

10 BOARD MEMBER BROWN: Mr. Chairman.

11 PRESIDENT CARTER: Yes, sir.

12 BOARD MEMBER BROWN: I'm against spending
13 \$500,000 or any portion thereof to convince Fish and
14 Wildlife that proper maintenance ought to be performed on
15 that channel.

16 PRESIDENT CARTER: I guess the question is their
17 definition of proper maintenance is different than others.

18 BOARD MEMBER BROWN: I guess.

19 SECRETARY DOHERTY: Well, how come other
20 applicants have to put in an application to alter the
21 channel and they don't? I mean aren't we in violation of
22 our own rules?

23 VICE-PRESIDENT HODGKINS: Seems to me we are.

24 But are they required to get a permit? A federal
25 agency required to get a permit to do work in our channel?

1 SECRETARY DOHERTY: They didn't do any work, so
2 they didn't have to get a permit. That's the problem.

3 PRESIDENT CARTER: I think it was natural
4 accrual.

5 VICE-PRESIDENT HODGKINS: Okay. I'm willing to
6 call for the question, if we can do that without beating
7 it too much.

8 PRESIDENT CARTER: And the question is to
9 continue discussion or not?

10 VICE-PRESIDENT HODGKINS: That's correct.

11 PRESIDENT CARTER: Okay. Does anybody want to
12 continue discussion?

13 BOARD MEMBER RIE: Yes.

14 PRESIDENT CARTER: Okay. So let's vote on the
15 question.

16 Mr. Punia.

17 BOARD MEMBER BROWN: Well, what's the question?

18 PRESIDENT CARTER: The question is, should we
19 continue discussion on this item or not?

20 BOARD MEMBER BROWN: Oh. Okay.

21 EXECUTIVE OFFICER PUNIA: Board Member Emma
22 Suarez?

23 BOARD MEMBER SUAREZ: Yes.

24 EXECUTIVE OFFICER PUNIA: Board Member Butch
25 Hodgkins?

1 VICE-PRESIDENT HODGKINS: No.

2 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

3 BOARD MEMBER RIE: Are we voting to continue the
4 discussion?

5 EXECUTIVE OFFICER PUNIA: Yes.

6 BOARD MEMBER RIE: Yes, I think we need to
7 continue the discussion.

8 EXECUTIVE OFFICER PUNIA: Board Member John
9 Brown?

10 BOARD MEMBER BROWN: I'll vote no.

11 EXECUTIVE OFFICER PUNIA: Board Member Maureen
12 Doherty?

13 SECRETARY DOHERTY: No.

14 EXECUTIVE OFFICER PUNIA: Board President Ben
15 Carter?

16 PRESIDENT CARTER: No.

17 So discussion is ended.

18 SECRETARY DOHERTY: That's right.

19 PRESIDENT CARTER: Mr. Punia, would you -- we
20 have a motion before us. The motion is to approve
21 Resolution 08-19 regarding the Sutter Bypass. And a
22 second.

23 Mr. Punia, would you call the roll.

24 EXECUTIVE OFFICER PUNIA: Board Member John
25 Brown?

1 BOARD MEMBER BROWN: I vote no.

2 EXECUTIVE OFFICER PUNIA: Board Member Maureen
3 Doherty?

4 SECRETARY DOHERTY: Now we're voting --

5 EXECUTIVE OFFICER PUNIA: -- on the resolution.

6 PRESIDENT CARTER: -- are we going to --

7 SECRETARY DOHERTY: -- accept the resolution?

8 PRESIDENT CARTER: The motion was to approve the
9 resolution.

10 SECRETARY DOHERTY: And you vote no?

11 BOARD MEMBER BROWN: Yes, ma'am.

12 SECRETARY DOHERTY: Yes, approve the resolution.

13 EXECUTIVE OFFICER PUNIA: Board Member Emma
14 Suarez?

15 BOARD MEMBER SUAREZ: No.

16 EXECUTIVE OFFICER PUNIA: Board Member Butch
17 Hodgkins?

18 VICE-PRESIDENT HODGKINS: Yes.

19 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

20 BOARD MEMBER RIE: I'm going to abstain because I
21 had a question on this resolution and I didn't get to ask
22 my question.

23 EXECUTIVE OFFICER PUNIA: Board President Ben
24 Carter?

25 PRESIDENT CARTER: Yes.

1 So the motion fails.

2 Ladies and gentlemen -- now you can ask your
3 question.

4 BOARD MEMBER RIE: Are you sure?

5 PRESIDENT CARTER: I am.

6 BOARD MEMBER RIE: Okay. My question is on the
7 first page, Item 2, it says, "The Board directs staff and
8 counsel to review flowage easements," et cetera.

9 Where are we going to put this in the priority of
10 the other things counsel was looking at? Previously we
11 asked counsel to research some issues with local
12 cooperation agreements and JPAs. To me, you know, the
13 one-dimensional model says we have no capacity. And
14 HEC-RAS is a perfectly good model. I would say 90 percent
15 of the agencies use that to make determinations if their
16 channels have capacity. So if HEC-RAS says we don't have
17 capacity, Sutter Bypass probably does not have the
18 capacity.

19 So considering that we potentially have an issue
20 of capacity here, are we going to direct our staff to put
21 their time and energy into looking at the Sutter Bypass or
22 local cooperation agreements?

23 PRESIDENT CARTER: There is no -- the resolution
24 does not make any distinction in terms of where it fits in
25 the priority. They would take direction from the Board on

1 that.

2 It goes on the list. And where on the list is
3 not stipulated.

4 BOARD MEMBER RIE: Well, I think we need to have
5 a discussion of what our priorities are. Is Sutter Bypass
6 a priority because there's potential flooding? Are we at
7 risk by not having the capacity we need? Or are we at
8 risk because not everybody has signed a local cooperation
9 agreement? I think we really need to look at where to put
10 our counsel's resources and our staff's resources. And at
11 some point - maybe not today - maybe next month - we need
12 to have a discussion of what our priorities are.

13 LEGAL COUNSEL CAHILL: You know, I might note for
14 Board Member Rie that we already have in hand and have
15 reviewed some of the representative easements in the area,
16 and that DWR's real estate people are pulling easements in
17 the areas that had been noted as areas of particular
18 concern. I think we could do this as well as other
19 things, you know, sort of at the same time.

20 BOARD MEMBER SUAREZ: You weren't taking
21 Thanksgiving off, right?

22 PRESIDENT CARTER: Okay. Is that satisfactory?

23 BOARD MEMBER RIE: I'm not sold that we need to
24 develop a two-dimensional model. In my opinion, if
25 HEC-RAS says we have a problem, I believe there's a

1 problem. And I think someone earlier said there's a
2 hydraulic jump right after the vegetation. There's
3 another indication that there's a problem.

4 So I would be supportive of working towards doing
5 something to improve the capacity in the Sutter Bypass,
6 but not necessarily developing a two-dimensional model.

7 PRESIDENT CARTER: So is that a motion to approve
8 Resolution 0108-19 with the deletion of number 4 in the
9 resolution?

10 EXECUTIVE OFFICER PUNIA: Well, you can move the
11 two-dimensional on the --

12 BOARD MEMBER RIE: Lady Bug?

13 SECRETARY DOHERTY: Pardon?

14 BOARD MEMBER RIE: Would you be okay with that?

15 SECRETARY DOHERTY: There's the jump.

16 BOARD MEMBER RIE: By all indications, there's a
17 capacity issue in the Sutter Bypass.

18 VICE-PRESIDENT HODGKINS: Could we call Keith up?

19 PRESIDENT CARTER: Yeah.

20 VICE-PRESIDENT HODGKINS: Keith, does your
21 HEC-RAS model indicate here that we don't have adequate --
22 we don't meet the design capacity for the Sutter Bypass?

23 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: The
24 question is, what is the design capacity? Is it the O&M
25 manual flows and freeboard or is it the '57 profile flows

1 and freeboard?

2 The one-dimensional analysis shows that we can
3 pass the '57 flows and not encroach upon the freeboard.
4 There was a little -- couple tenths up in the old growth
5 area where it exceeded and dropped below. We're actively
6 working in that area. We feel like it's better. We feel
7 like there's a lot improvement since '97 when the break
8 occurred. And the break actually occurred not at high
9 flows but at lower flows.

10 So, I would say -- we are actively working on all
11 the resolution items except the two-dimensional model.
12 And if you just understood that that isn't our highest
13 priority, that as funding is available we would love to
14 have a 2D model, but we would prioritize it. And, you
15 know, if we had funding, we would love to have a 2D model,
16 but we're not actively pursuing it right now.

17 We're fine with the rest of the resolution. And
18 we will work to notify land holders that have vegetation
19 that need to be managed. We are looking at areas where
20 there's deficient maintenance now, and we're targeting
21 that and we're going to continue on aggressively trying to
22 improve the conveyance capacity of the Sutter Bypass.
23 We'll continue to work with Sutter Bypass, the refuge
24 also.

25 PRESIDENT CARTER: So you said earlier that the

1 model indicates that it can pass with a couple of
2 exceptions, the '57 design, but it cannot pass the O&M
3 capacities without encroaching on freeboard?

4 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes,
5 that's correct.

6 PRESIDENT CARTER: And the issue now, and which
7 is addressed in Item 5 in the resolution, is what is the
8 capacity?

9 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
10 Correct.

11 PRESIDENT CARTER: Is the correct one the O&M or
12 is it '57 or is it something else?

13 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.

14 PRESIDENT CARTER: Okay.

15 BOARD MEMBER BROWN: Does this -- excuse me. Go
16 ahead.

17 SECRETARY DOHERTY: Last year you said to Butch
18 it had three feet of freeboard; is that correct?

19 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: No,
20 it's -- the '57 profile ranges from a little bit less than
21 five feet to about six feet or something like that. So
22 there's --

23 SECRETARY DOHERTY: Because the bypass is
24 required to have six feet of freeboard.

25 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: In

1 the O&M manual it says six feet. The '57 profile is 4.8,
2 or something like that, to, you know, closer to 6 down at
3 the bottom end, I think it is. And it's variable.

4 BOARD MEMBER RIE: Do you know what the numbers
5 are, the '57 profile cue versus the O&M cue?

6 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

7 Well, the cues -- if you look below Wadsworth
8 Canal, the '57 profile is 155,000 cubic feet per second.
9 And the design flow below Wadsworth is 178,000 cubic feet
10 per second. It's a little bit less above Wadsworth, and
11 then below Tisdale they add another 38,000 cubic feet per
12 second, even though you can't get 38,000 through Tisdale
13 Bypass.

14 BOARD MEMBER BROWN: Keith, to a capacity at '57
15 storm criteria, what kind of growth are you leaving in the
16 center of the channel? Understanding that the banks --
17 we're going to leave those alone for stabilization. But
18 what are you leaving in the center of that --

19 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: This
20 is based on the existing conditions as they now stand.
21 And we're actively trying to improve on that.

22 BOARD MEMBER BROWN: Oh, as it stands today?

23 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: As
24 it stands today.

25 BOARD MEMBER BROWN: Right now, right --

1 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.

2 BOARD MEMBER BROWN: All right. Are you able to
3 work with Fish and Game or Fish and Wildlife and pull out
4 some more of the obstructions in the bottom of the
5 channel?

6 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: We
7 are.

8 BOARD MEMBER BROWN: So you're going to improve
9 on '57 then?

10 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON: Yes.
11 And we've identified --

12 BOARD MEMBER BROWN: Why do you need a model to
13 do this then?

14 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:
15 Well, because it gives you more assurance,
16 because there's always some question about the model
17 accuracy. And the model does take an average condition
18 across the channel, you know. So a two-dimensional model
19 will show mounds that could develop in an area and they'll
20 take into account maybe what -- the curve that's there.

21 BOARD MEMBER BROWN: I understand. But it seems
22 to me like you're pretty close. And if you're still able
23 to work with Fish and Wildlife, you may be there yet this
24 season.

25 DWR FLOOD MAINTENANCE OFFICE CHIEF SWANSON:

1 That's my point, is -- and I do think we're
2 close. I do think we've made a lot of progress. We're
3 not done, you know. When we came before the Board last
4 time, we talked about some areas of specific concern that
5 were our primary focus. And then we were going to go
6 along the edges and smooth those out hydraulically. So
7 where we had the vegetation encroaching into the channel
8 in irregular fashion, we were going to try to thin that
9 out. And so we're going to continue doing that.

10 BOARD MEMBER BROWN: Maybe Teri would be amenable
11 to moving ahead with this resolution if we reworked Item
12 No. 4 a little bit.

13 BOARD MEMBER RIE: Sure.

14 BOARD MEMBER BROWN: Or took it out, rework it.

15 SECRETARY DOHERTY: I don't want to see it taken
16 out.

17 BOARD MEMBER BROWN: Do you want to leave a model
18 in there?

19 SECRETARY DOHERTY: Mr. Countryman even came and
20 testified for us and said that we needed a two-dimensional
21 model. I talked to the Army Corps of Engineers. They
22 said we needed a two-dimensional model. Now, I don't
23 know. Maybe they're all crazy and I am too, but --

24 PRESIDENT CARTER: Well, you know, perhaps, Lady
25 Bug, we -- in the long run we need a two-dimensional

1 model. But if the data that we have right now
2 conclusively says that we have a capacity problem, and we
3 can work towards a two-dimensional model without having it
4 in the resolution, but continue with the efforts that we
5 have in the resolution at this point --

6 SECRETARY DOHERTY: Fine.

7 PRESIDENT CARTER: -- without the modeling, that
8 might be a compromise.

9 BOARD MEMBER RIE: I just think that -- you know,
10 this 155,000, maybe it can pass, barely, and it doesn't
11 sound like the 178,000 cubic feet per second can pass.
12 And if this is all based on 1957 hydrology, you know, we
13 all know that the hydrology most likely will change and
14 we're going to have more water. It just seems to me it
15 doesn't matter what kind of model you use. If we get more
16 water coming down the river, we're going to see flooding
17 based on the information we have.

18 SECRETARY DOHERTY: You are aware that where the
19 break occurred in that levee is where that old grove is?

20 BOARD MEMBER RIE: (Nods head.)

21 SECRETARY DOHERTY: Okay. I just want to make
22 sure.

23 PRESIDENT CARTER: In '97?

24 SECRETARY DOHERTY: In '97, yes.

25 PRESIDENT CARTER: So --

1 EXECUTIVE OFFICER PUNIA: Ben, may I make a --

2 PRESIDENT CARTER: Yes. Mr. Punia.

3 EXECUTIVE OFFICER PUNIA: I think the fundamental
4 issue is the local residents view that there is a problem
5 in the capacity. And in their judgment those trees need
6 to be removed. And without a two-dimensional model, we
7 cannot document that those trees need to be removed. So I
8 think that's why the local interests are pushing for the
9 two-dimensional model. And they are saying that unless we
10 have a good documentation, that U.S. Fish and Wildlife
11 Service will not allow us to remove those trees.

12 BOARD MEMBER BROWN: Have they made any
13 concession that if we do a two-dimensional model and it
14 tells them that they should be removed, that they'll still
15 remove them?

16 EXECUTIVE OFFICER PUNIA: I think it's -- no,
17 there is no assurance. It's just a better documentation
18 of the problem.

19 SECRETARY DOHERTY: May I ask, Ginny -- Ms.
20 Cahill, did you have -- you have a letter there from the
21 Department of the Interior. Didn't they agree that the
22 ability to maintain the channel as it was is permissible?

23 LEGAL COUNSEL CAHILL: I don't remember. I don't
24 have it with me. I gave you back your copies of it.

25 SECRETARY DOHERTY: Oh. Okay.

1 PRESIDENT CARTER: I think for me the issue of --
2 if the conclusion is that the old growth needs to be
3 removed for public safety, we can go in and do that. The
4 \$500,000 we'd spend on a model would pale in comparison to
5 the environmental mitigation that they would require us to
6 do to do that. Just a guess on my part.

7 So, anyway, I -- do we have a motion?

8 Does anybody want to make a motion?

9 BOARD MEMBER SUAREZ: I will, Mr. President.

10 I'd move we approve the resolution with amendment
11 to Item No. 4 -- Section No. 4 saying that "The Board
12 directs staff to work with DWR and the Corps in developing
13 a two-dimensional model, funding permitted."

14 PRESIDENT CARTER: "... to ascertain the
15 impacts," blah, blah, blah, funding permitted"?

16 BOARD MEMBER SUAREZ: Yes.

17 PRESIDENT CARTER: Okay. Is there a second?

18 VICE-PRESIDENT HODGKINS: I'll second.

19 SECRETARY DOHERTY: Would you repeat --

20 PRESIDENT CARTER: The motion is to approve
21 Resolution 08-19, with the amendment to Item 4 appending
22 on the end of Item 4 "funding permitted."

23 PRESIDENT CARTER: Mr. Akin.

24 MR. AKIN: Yes. I was the Sutter County
25 Supervisor, 5th District, during the 1997 flood. Right

1 after the flood, we took and measured, very simply, the
2 water levels above the old grove, above the wildlife
3 refuge, because you could see the water levels. Below the
4 refuge you could see the water levels. All we did to show
5 that there was a hydraulic jump at the site of the Sutter
6 Wildlife Refuge was measure the water levels above and
7 below the refuge. There was roughly a three-foot height
8 difference in 1997 in the water levels above the refuge
9 than there was below the refuge. And that is above the
10 Tisdale Weir. So I mean we had a significant jump there.

11 And I think the reason that -- well, I know my
12 concerns about not having a two-dimensional modeling is
13 the fact that Fish and Wildlife is fighting and screaming
14 the whole way. They don't want -- if we weren't pushing
15 extremely hard right now, there wouldn't be anything being
16 done there. They don't see a problem with what they're
17 doing and what they've allowed to happen there.

18 And now because there's tules growing out
19 there -- you know, I don't have a problem with -- and
20 local residents just don't have a problem with a few trees
21 here and there. But tules form a dam and water will not
22 go true them. And they cut a few narrow channels through
23 there to let water flow through the Sutter Bypass, and
24 they say, "You know, we've done all we need to do."

25 Well, it's not -- you know, a 40-foot path

1 through those tules here and there does not equate to a
2 half a mile or a mile of clean channel that we used to
3 have there.

4 Prior -- and I can't give you the exact dates.
5 But years ago the Sutter Bypass and the wildlife refuge
6 was farmed north of Oswald Road one year and then south of
7 Oswald road the next year, so that it provided feed for
8 the water foul that came down in the wintertime. At that
9 time, it was a clear channel just like the rest of the
10 Sutter Bypass. And since they took it over and have not
11 allowed any farming in the area, the problem has started
12 to become more and more of a problem in the last 25 or 30
13 years.

14 SECRETARY DOHERTY: The last year they farmed was
15 1989.

16 MR. AKIN: Oh, 1989 is what it was?

17 BOARD MEMBER BROWN: You may be misunderstanding
18 the discussion up here. I think we're all in agreement
19 that we want that cleaned out. And capable of --

20 MR. AKIN: I understand that.

21 BOARD MEMBER BROWN: -- carrying those flows.

22 The concern is, if we have to spend a half a
23 million dollars in order to convince Fish and Wildlife it
24 needs to be done.

25 MR. AKIN: You know, and my concern is -- and I

1 have the same concern, because I don't want to spend any
2 more money than we have to. But the only way that you're
3 going to change Fish and Wildlife's mind on this is to hit
4 them in the head with a rock. And that model will do
5 that.

6 BOARD MEMBER BROWN: Okay.

7 MR. AKIN: Thank you.

8 PRESIDENT CARTER: Okay. So we have a motion and
9 a second before us.

10 Does everybody remember what the motion was?

11 Any further discussion?

12 Mr. Punia, would you call the roll, please.

13 EXECUTIVE OFFICER PUNIA: Board Member Emma
14 Suarez?

15 BOARD MEMBER SUAREZ: Aye.

16 EXECUTIVE OFFICER PUNIA: Board Member Butch
17 Hodgkins?

18 VICE-PRESIDENT HODGKINS: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

20 BOARD MEMBER RIE: Aye.

21 EXECUTIVE OFFICER PUNIA: Board Member John
22 Brown?

23 BOARD MEMBER BROWN: Aye.

24 EXECUTIVE OFFICER PUNIA: Board Member Maureen
25 Doherty?

1 SECRETARY DOHERTY: Aye.

2 EXECUTIVE OFFICER PUNIA: Board President Ben
3 Carter?

4 PRESIDENT CARTER: Aye.

5 Thank you.

6 Motion carries unanimously.

7 PRESIDENT CARTER: All right. As you recall,
8 Item 13 was postponed till December. I'm giving us a
9 reprieve. We're going to do a little catch-up here.

10 And we're going to move on to Item 14, FloodSAFE
11 Yolo Pilot Program, an informational briefing from Mr.
12 Borcalli.

13 Good afternoon. Thank you for your patience.

14 MR. BORCALLI: Good afternoon, Mr. President and
15 members of the Board.

16 Let me just pull up our program here.

17 (Thereupon an overhead presentation was
18 Presented as follows.)

19 MR. BORCALLI: I assure you this discussion will
20 not be as challenging as what you've been dealing with.

21 PRESIDENT CARTER: And we don't have to make
22 decisions, so that will speed things up.

23 MR. BORCALLI: Well, I'll qualify it by saying
24 that not today. But in the future I think, yes.

25 Okay. Anyhow, good afternoon, Mr. President and

1 members of the Board. My name is Fran Borcalli. I'm
2 Project Manager for the FloodSAFE Yolo Pilot Program. And
3 what I want to address today is not to duplicate what we
4 spoke about on the banks of Cache Creek back in August.
5 And also we had provided an informational report, and my
6 intent is not to duplicate that.

7 Except I do want to -- the very first part,
8 FloodSAFE Yolo Pilot Program, I think warrants some
9 attention. And the effort that we're talking about today
10 emerged from a very lengthy program, a little over two
11 years, to prepare an integrated regional water management
12 plan for Yolo County, and through the funding that the
13 Department of Water Resources provided.

14 But in going through that process we had public
15 meetings -- three public meetings. And the important
16 point here is that in those public meetings, the primary
17 concern of the community was the flooding and, in
18 particular, flooding associated with Cache Creek. And as
19 my presentation is entitled here today is "Cache Creek and
20 the Cache Creek Settling Basin."

21 So coming out of that effort, the partners -- we
22 spoke about the City of Woodland, the County of Yolo and
23 the Yolo County Flood Control and Water Conservation
24 District rose to the occasion to enter into a memorandum
25 of understanding to pursue a flood management program for

1 the western part of Yolo County. It's not the entire
2 county. And that's why it's called a pilot program.

3 But I think this is important. The other part of
4 it is that the program, like I say, involves the entire
5 west side of Yolo county. But what we're focusing on here
6 today is Cache Creek and the Cache Creek settling basin.

7 And so with that, if you have questions as I go
8 through it, I'd be happy to answer those. But I will make
9 it a point not to duplicate what we've talked about
10 before.

11 --o0o--

12 MR. BORCALLI: On this slide here, you know and
13 you've seen, you lived with these facilities, the Sutter
14 Bypass -- the Sutter Bypass and Natomas Cross Canal. The
15 red lines are levees of the State Plan of Flood Control.
16 The orange lines -- there's an orange line on the east
17 side of the Sacramento River. There's an orange line
18 around the south side of the Cache Creek settling basin
19 and the south side of Cache Creek. Those are also levees
20 of the State Plan of Flood Control. But they're
21 identified as urban levees because of the population
22 that's being protected.

23 But the main point here is these are levees.
24 There's a lot of work going on, will continue to go on,
25 with regard to these levees that are part of the State

1 Plan of Flood Control.

2 What I want to address today are the levees
3 around the Cache Creek settling basin, a facility that was
4 completed in 1993. As I've noted on there, it's under the
5 jurisdiction of the Division of Safety of Dams, Dam No.
6 84. And then the levees -- project levees that are along
7 Cache Creek. And on the north side they terminate to the
8 west of Interstate 5. But those are the project levees
9 that we are interested in talking about today.

10 And, again, coming out of the public meetings
11 that we had, the flooding issues associated with this area
12 are of great concern to the community.

13 I'll use the word "community" several times later
14 on. And just understand that by that I mean the partners,
15 the city, the county, and the flood control district, is
16 really the community I'm representing here.

17 In the next three slides I want to just do some
18 historical illustration of some of the floods that were
19 documented by the Department of Water Resources, and then
20 follow that with an analytical floodplain delineation.

21 --o0o--

22 MR. BORCALLI: The flooded area of 1937 and 1938.
23 This was captured by the Department of Water Resources.
24 And it's the light shaded area.

25 At that time, Interstate 5 as it's shown on here

1 was not there, but there was the old Highway 99.

2 But the point here as it relates to this
3 discussion is that Cache Creek back in that period would
4 come out of bank. There were some berms along the creek,
5 and it would overtop those.

6 What's important is that when it came out of
7 bank -- and in this particular case we're interested in
8 the south side as it relates to the City of Woodland. And
9 when it would come out of bank, it would flow essentially
10 due east. This blue line that reflects the settling
11 basin, that settling basin as its drawn there did not
12 exist at the time. And so this is merely to illustrate
13 the path -- the floodway that existed back at that time.

14 There was the beginnings of a settling basin here
15 along the Yolo Bypass levee.

16 The main thing here is that the City of Woodland,
17 at least back at this time, was not impacted by that.

18 --o0o--

19 MR. BORCALLI: And then, similarly, in
20 February-March of 1940 the Department documented a flood
21 that occurred then. And a little more extensive flooded.
22 But the main point here is that when it came out of bank,
23 over levees or berms, that that water flowed due east.
24 And again the settling basin, as I have it outlined in
25 blue, did not exist at that time. Although there were the

1 beginnings, the early stages of a settling basin.

2 The settling basin in the information that I
3 provided to you in your Board packet, like I say, it was
4 completed in 1993, constructed by the Army Corps of
5 Engineers. And clearly the benefits for that facility do
6 not have anything to do with this area that we're
7 concerned about right now.

8 They benefit other areas of the project,
9 Sacramento in particular. And the idea is to keep -- the
10 whole intent of the settling basin is to maintain the
11 integrity of the Yolo Bypass in terms of flood-carrying
12 capacity. We haven't really found the analysis for that.
13 But that is clearly the intent and purpose of that
14 facility.

15 --o0o--

16 MR. BORCALLI: Okay. So then in 1993, like I
17 say, the project was completed. And what this represents
18 is a plausible scenario of a 100-year event, using the
19 Army Corps of Engineers hydrology. There's many different
20 variations of this. But the point here is that there's
21 water that comes out of Cache Creek, there's water that
22 comes over the levees on Cache Creek and that water flows
23 due east, but it no longer can travel towards the Yolo
24 Bypass. The settling basin is an impediment to conveying
25 flood waters that leaves the Cache Creek system.

1 And an important point here is that the impact --
2 I mention the benefits in the information that I handed
3 out in your Board packet. The benefits of the project
4 were identified, talked about - some might be
5 questionable - but the impacts were not really evaluated.
6 Clearly the impact of the settling basin and this levee on
7 the hydraulics of the flood flows leaving Cache Creek were
8 not looked at.

9 I did talk to CalTrans. And I asked CalTrans,
10 "Are you aware that this section" -- there's about two
11 miles of Interstate 5 here -- "that in an event like this,
12 that this section of the freeway would be flooded, deep
13 flooded for weeks. There is no provision to de-water this
14 area." And so the water that leaves the creek will be
15 impeded by the settling basin west levee and will pond
16 against the west levee of the Yolo Bypass. There's no way
17 to evacuate that without bringing pumps in to do that.
18 There is no plan to do that.

19 CalTrans was quite surprised about this actually.
20 So aside from the concerns about the community, there is a
21 segment -- an important segment of the national highway
22 system that is really impeded in an event like this. And
23 I think it's really important to highlight that as well.

24 --o0o--

25 MR. BORCALLI: So coming out of that there's

1 important points that we've identified that we would like
2 to leave with you. There's no decisions to be made today.
3 You've had a pretty full agenda. But I would hope that
4 you will carry some of this with you when you leave.

5 Today, the Cache Creek levees - and we've known
6 that for a long time - but even the settling basin levees
7 are not certifiable not only for a hundred-year. They're
8 not certifiable for a 10-year event. The information that
9 the Army Corps of Engineers provided to FEMA in this last
10 round of their map mod program there's no basis for
11 certifying these levees.

12 So if you go back and look at the hundred-year
13 floodplain that I had, that floodplain is worse when FEMA
14 maps it. And it will be worse when they come back with
15 the final maps, which are in progress right now, because
16 those levees in the initial analysis by FEMA were
17 considered partially certified but now they're totally
18 removed.

19 So the community is really at risk. And I can't
20 tell you how much flood insurance they pay, but it's
21 pretty substantial and, in our judgment, really not
22 appropriate at this point in time.

23 Again, as I mentioned, the adverse impacts of
24 that settling basin were not evaluated. You go back and
25 look at the design memorandum of 1987, it's not addressed.

1 And it's very serious in terms of a resolution of flooding
2 in that area.

3 Woodland and the areas -- in the adjacent area,
4 the unincorporated area, need a resolution to flood risk.
5 Back in 2000, 2002 there was an effort by the Army Corps
6 of Engineers to do a feasibility study. They went down
7 that path. That community was very polarized as a result
8 of the projects that were being recommended at that time.

9 The partners are working very diligently in
10 trying to get some conceptual solutions and to try to move
11 this program forward.

12 Again, the two miles of Interstate 5 that are
13 flooded we think is serious. I think CalTrans thinks it's
14 serious. Quite honestly, CalTrans is not a part -- is not
15 a player in the Central Valley Flood Protection Plan, and
16 I think should be in some of these areas. But it isn't
17 today.

18 There's also a provision I didn't mention to --
19 for the Cache Creek settling basin there's an overflow
20 weir that's about 1740 feet long. The plan when that
21 facility was constructed is that it have a 50-year life.
22 That was 1993. Because of other issues, they want to
23 increase the trap efficiency of that. There's provision
24 to raise that weir six feet. And all I can say is that
25 even though that's in the authorized project, the locals

1 there, the community really would be resistant to that.
2 The floodplain that would result from -- on a FEMA map if
3 that was to be raised would be horrendous. And --

4 SECRETARY DOHERTY: So if you raise that weir,
5 it's going to back up even more water into Woodland,
6 right?

7 MR. BORCALLI: Correct. And that's the point.
8 And that is a part of the authorized project. And all I'm
9 saying here is that that would be fought very, very
10 strongly. And we just don't think it makes sense. But
11 that is in the authorized project.

12 --o0o--

13 MR. BORCALLI: Okay. So the partners have been
14 trying to look at some plausible solutions, and they
15 don't -- we don't have solutions now. But it's evident to
16 us and the partners that a solution is going to require
17 some modification of the Cache Creek settling basin.

18 And this is the hundred-year floodplain that I
19 showed you earlier. And we don't have a solution in mind.
20 But we do conceptually think that there has to be
21 recovery, so to speak, of the floodway to allow the water
22 that leaves Cache Creek -- because we don't believe it's
23 practical to try to contain that water. There will always
24 be a floodplain, but it needs to be managed. And we think
25 that has a lot of merit from the standpoint of folks

1 talking earlier about global climate change. We're
2 interested in maintaining a floodplain. We think that's
3 resilient to these uncertainties in hydrology.

4 But we do believe that this -- the capacity that
5 was there before, that has to get recovered. And it has
6 to be -- there has to be provision to bring water through
7 a part of that settling basin directly into the Yolo
8 Bypass. And that we think is a very important part of any
9 solution there.

10 BOARD MEMBER BROWN: Fran, since you have no
11 downstream storage or upstream regulation, what are you
12 looking at, greater conveyance capacity? Is that your --
13 it's your plan, or is it?

14 MR. BORCALLI: No, we're -- I think fundamentally
15 there's levees here along Cache Creek. And thanks to the
16 program that you folks went out and observed, the setback
17 levees, that is an ongoing process. There will be more
18 setback levees. And certainly the partners, the local
19 community appreciates what's being done there.

20 We're not looking at increasing capacity. We're
21 looking at managing the flood flows that come out of the
22 creek. And in order to do that, we have to have the
23 ability to move that -- convey it the way that it used to
24 be conveyed.

25 BOARD MEMBER BROWN: You're looking at downstream

1 regulation then?

2 MR. BORCALLI: Pardon me?

3 BOARD MEMBER BROWN: You're looking at downstream
4 storage or regulation?

5 MR. BORCALLI: No, we're just looking at this
6 water that comes out of the creek, taking that through
7 here and then into the Yolo Bypass.

8 BOARD MEMBER BROWN: That's what I meant. You
9 need greater capacity in --

10 MR. BORCALLI: Capacity, not storage. But
11 capacity.

12 BOARD MEMBER BROWN: Yes, that's your answer
13 then, isn't it?

14 MR. BORCALLI: We want to restore some of the
15 capacity that --

16 BOARD MEMBER BROWN: Greater capacity in your
17 conveyance system?

18 MR. BORCALLI: -- capacity that doesn't exist
19 today, right. And the only plausible way that we see to
20 recover that is in a part of the settling basin.

21 SECRETARY DOHERTY: So would you have to set
22 aside land for that settling basin?

23 MR. BORCALLI: Well, that's what we need to
24 investigate. But fundamentally this Cache Creek settling
25 basin is a short-term fix. And we think that this can be

1 done as a short-term fix for the settling basin keeping
2 the settling basin whole, as it was intended, but also
3 restoring the capacity that this floodplain had to move
4 water into the Yolo Bypass. The Cache Creek settling
5 basin needs a lot of attention. It hasn't gotten it yet,
6 but it's going to need it. And it needs it, irrespective
7 of what we're talking about here. And so what we're
8 saying here is that a solution for this area is going to
9 require some recovery -- I would call it recovery of the
10 conveyance capacity that was cut off. And how much that
11 needs to be, you know, we haven't done that. But we would
12 like to work on that in conjunction with the Department.

13 --o0o--

14 MR. BORCALLI: Along that line I really -- in
15 terms of closing remarks, and really I think in line with
16 Board member Brown. But the community isn't pointing
17 fingers. The community is saying, "We want to work with
18 you, but we need to work in an expedient manner." They're
19 eager to implement a flood risk reduction project. And
20 they think there's feasible ones out there. The
21 community's ready to come together to move a project
22 forward.

23 We've had initial communications with the
24 Department and the Corps. This was back in February. We
25 haven't had intervening ones because the partners have

1 been doing some homework to get a sense of, you know, what
2 could make sense. They're in a position now to really
3 engage in a meaningful discussion.

4 The nice part about it is the Army Corps of
5 Engineers Lower Cache Creek Feasibility Investigation is
6 an existing authorized project. It's not a new
7 authorization.

8 And the lobbyist for the Department worked with
9 our folks and really -- an authorization for continuing
10 the feasibility study was in the last FY 09 appropriation
11 request. So, you know, the parties are starting to work
12 together. We're just at a point now where we can be a lot
13 more aggressive and want to be a lot more aggressive.

14 We have a draft project management plan from the
15 Corps of Engineers. They gave us that a few months ago.
16 We haven't commented on it, because we're trying to
17 identify what some of the feasibility study tasks should
18 be. We know what those should be now. And so we're
19 prepared to turn that back to the Corps and again get
20 engaged in a meaningful discussion with the Department and
21 your Board and the Corps to come together as a partnership
22 arrangement.

23 And I think, more importantly, in terms of what
24 they're looking at, you know -- you are acquainted with
25 the term "no regrets"? In our judgment, the concept that

1 we talked about using a part of the Cache Creek settling
2 basin is a "no regrets" project. The Cache Creek
3 system -- you can do things with the Cache Creek system
4 and you're not going to affect other parts of the State
5 Plan of Flood Control. So it's not like, well, if I do
6 something here, do I need to be concerned how I'm
7 impacting other parts of the system? In our judgment you
8 can do things here that have no impact, and so there's no
9 regrets. There's no reason to wait for something else to
10 get done in order to start looking at this. And so the
11 community would like to really be aggressive in looking at
12 it. They're prepared to be a partner in it, and they want
13 to do that.

14 And, like I say, we've had the initial
15 discussions, and there's been a time lapse in there
16 because we had to do some homework. And we've done the
17 homework. We're prepared now to get engaged in a
18 meaningful discussion and hopefully come to an agreement
19 where we can move a feasibility study forward.

20 We think the authorized project in terms of the
21 sediment, in terms of its useful life as it was
22 authorized, can be maintained through this feasibility
23 study. We don't think -- we think the project can be kept
24 whole. And so that decision can -- that project can move
25 forward, keep the authorized project whole - it had a

1 50-year life - and not jeopardize that part of it.

2 And so with that, we'd like -- and, like I say,
3 there's no -- we're not asking for decisions. We just
4 wanted to let you know where the community is. We talked
5 about it on Cache Creek. We handed -- provided some
6 information. This is taking it a little bit further. I
7 think the important thing here is that there's an
8 authorized feasibility project, not appropriated yet, but
9 there is an authorized project with the Corps of
10 Engineers.

11 We think there's a viable solution by recovering
12 some of the floodway capacity. We think it's very doable,
13 but would like to be engaged with your Board and the
14 Department and the Corps in really trying to move
15 something forward. And I can safely say we do have
16 representatives of each of the three entities here. But
17 they do want to move a project forward and we think they
18 deserve it.

19 And with that, I'd be happy to entertain any
20 questions.

21 PRESIDENT CARTER: Thank you, Mr. Borcalli. We
22 really appreciate you coming this afternoon. And it's
23 very, very encouraging that the locals are so engaged in
24 this. That's a big help to us. Thank you.

25 Are there any questions for Mr. Borcalli?

1 VICE-PRESIDENT HODGKINS: Is DWR supportive of
2 moving forward with the second feasibility study?

3 MR. BORCALLI: I can't speak for them. We had
4 some initial discussion. I don't know if George is
5 here or not.

6 They were -- all I can say is in the meeting that
7 we had at the end of February the discussion was positive.
8 What we needed to get that discussion going further was to
9 have a budget on the feasibility study. And so now we're
10 in a position to really finalize the scope of work with
11 the three parties. And then I think they can be more
12 fully considered at that time.

13 VICE-PRESIDENT HODGKINS: Okay.

14 PRESIDENT CARTER: Any other questions?

15 Mr. Borcalli, than you very, very much.

16 MR. BORCALLI: Thank you very much for your time.

17 PRESIDENT CARTER: And thank you for your
18 patience.

19 Ladies and gentlemen, let's take a five-minute
20 break. And then we will continue with the Ricardo Pineda
21 show with items 15, 16, and 17.

22 (Thereupon a recess was taken.)

23 PRESIDENT CARTER: Ladies and gentlemen, shall we
24 continue.

25 We are moving on to Item 15 and 16 and 17. And

1 Ricardo has graciously offered to be succinct on these
2 three presentations.

3 So we'll kick it off with Senate Bill 5, Building
4 Code Project Update.

5 Ricardo, good afternoon.

6 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Good
7 afternoon, President Carter and Vice-President Hodgkins
8 and members of the Board.

9 (Thereupon an overhead presentation was
10 Presented as follows.)

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: The
12 reason I'm making these three presentations today, first
13 about the Building Code, Senate Bill 5; and then about the
14 Risk Notification Program and Levee Flood Protection
15 Zones, Assembly Bill 156; and then Central Valley
16 Floodplain and Evaluation and Delineation Program, Senate
17 Bill 5, is that all three of them have deadlines
18 associated with the programs that are pretty much here at
19 the end of the calendar year.

20 Two of the programs, the Building Codes and Levee
21 Flood Protection Zones, do not need Board approval. The
22 Building Codes requires us to keep the Board informed.
23 But we really need to keep the Board informed on all three
24 programs.

25 The Central Valley Floodplain Evaluation and

1 Delineation Mapping Schedule does need the Board's
2 approval. So, as noted, this is an info item. This is
3 not an action item. So in December myself or a
4 colleague - I'm not sure if I'll be here at the Board
5 meeting - we'll be bringing the schedule back to you. And
6 if you like the presentation and have enough info, we
7 maybe even can put it on the consent calendar and make
8 things move faster.

9 So I'm going to start off with the Senate Bill 5
10 Building Codes Project which modified the Health and
11 Safety Code Section 50465.

12 --o0o--

13 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: We've
14 been before you once before. We read the code, so I'm not
15 going to read it again. If I had more time, I would,
16 because it tells a good story.

17 Last month we gave you an update of where we were
18 at with the Technical Advisory Committee that Supervising
19 Engineer Fua sits on, and how we were moving towards a
20 submission pursuant to the requirements of the Senate bill
21 which is now in the Health and Safety Code to put a
22 proposal forth of proposed building codes that would
23 reduce the risk of life and property in areas protected by
24 the Central Valley Flood Protection Plan by January 1st,
25 2009.

1 --o0o--

2 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: We've
3 essentially regrouped a little bit and said -- you know,
4 essentially we've been working with the Building Standards
5 Commission since this legislation was passed. And we
6 realized early on that their schedule for submitting code
7 modifications for this current round of modifying the
8 State Building Standards Code is in July. So essentially
9 if we submit in January the code language, the proposal
10 will just sit there.

11 But we wanted to -- the schedule we've been
12 working on, we wanted to meet the requirements of the
13 legislation.

14 --o0o--

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
16 we've been doing some discernment with the FloodSAFE
17 Management Team and with the stakeholders and with
18 yourself, and we kind of realized we want to do this
19 project right. We just don't want to submit a package
20 that maybe makes some technical sense but doesn't have
21 buy-in from stakeholders and has been kind of rushed
22 through the process to meet the deadline.

23 So essentially what we're going to be doing --
24 and I'm not following the slides exactly in order to save
25 time because it's late in the day -- is we're regrouping,

1 we're adding more invitees to the Technical Advisory
2 Committee - those are stakeholders who are interested in
3 the Building Code process - we're communicating with you,
4 we're willing to come back. And essentially what we're
5 going to provide at the end of the year to DWR Executive,
6 who will then forward it to the Legislature to Senator
7 Machado's office, is essentially a status report of where
8 we're at.

9 And then in January we're going to be
10 continuing -- we're going to have one more Technical
11 Advisory Committee in December. And then we'll probably
12 have couple more in January and February. But also in
13 January -- starting in January we're going to start an
14 outreach effort for stakeholder communications throughout
15 the Central Valley, probably hold potentially two to four
16 workshops. And because we want -- remember, there's kind
17 of two levels of input to this process: The technical
18 people who are involved with codes, like the Division of
19 State Architect under Department of General Services, the
20 Office of Statewide Health Planning and Development,
21 OSHPD, and other stakeholders, the Building Standards
22 Commission and their coordinating committee. And then
23 there are other groups like San Joaquin County, City of
24 Stockton, maybe City of Sacramento, community officials,
25 the Building Industry Association. They're on the TAC but

1 they may also be interested in our community and
2 stakeholder outreach. They want to participate in the
3 process and they want to make sure that their voice is
4 heard before we put the actual package together.

5 So, bottom line, we have till July to put the
6 package together. We need to add additional stakeholders
7 to our Technical Advisory Committee and we need to have
8 more outreach to people who could be affected, especially
9 the cities and counties.

10 --o0o--

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
12 that's the plan that we're at. This is a list -- and I
13 passed out the PowerPoint presentation so you can take it
14 home and read it more thoroughly -- a list of our current
15 organizations that are on the Technical Advisory
16 Committee. We've invited about nine others, and they
17 haven't come to the first two meetings.

18 --o0o--

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
20 the first two meetings were held. And we made a lot of
21 progress. And there were a fair amount of new people at
22 the second meeting, so we had to kind of retrace some of
23 our steps to bring them up to speed.

24 Please note that we still have the same six
25 provisions under consideration. And I'll just kind of

1 quickly go over those. Remember, we talked about them
2 before, that we think that what happened in Katrina, we
3 need a clear path for escape for areas that are subject to
4 the 200-year flood where flood depths are greater than
5 three feet. To 200-year flood and the three-foot depth,
6 that's written into the legislative language. So we
7 didn't pick that arbitrarily.

8 We're exploring the raising of the structure or
9 the first habitable floor will essentially require
10 additional foundation height above the 200-year water
11 surface elevation, where practicable. It isn't
12 practicable to raise a structure 18 feet, but it maybe
13 practicable to raise it 3 feet.

14 Ensure that the buildings can stand the hydraulic
15 forces. So develop clear load paths so that the buildings
16 aren't pushed off their foundations when the flood waters
17 occur.

18 We're looking at potential codes dealing with
19 hazardous materials in industrial facilities and in
20 hospitals. So we're looking at protecting those, making
21 sure that those hazardous materials -- the containment
22 facilities don't float away or are not ruptured during a
23 flood event.

24 We're also looking at Provisional Code No. 5 as
25 we're looking at potential for electrical and gas shut-off

1 where practical. We're talking to Division of State
2 Architect and others who are experienced, and with the
3 Building Industry Association. And we're still exploring
4 the use of flood resistant materials.

5 So I think we're on a pretty good path.

6 Let me bring up a slide.

7 --o0o--

8 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

9 Essentially this is how -- we've essentially
10 completed two technical advisory committees and we've got
11 potentially three more to go.

12 And we're going to step back a little bit. And
13 at the next meeting we're going to talk about context.
14 And you say, "Well, what do you mean by context, Ricardo?"
15 And essentially it's -- the building codes are one of many
16 projects and programs within FloodSAFE, within the
17 Division of flood Management, DWR that we're doing to
18 reduce the impacts and risk of flooding. You know, the
19 impacts of a flood occurs. We're to try to reduce the
20 risk of flood so it doesn't occur. So we need to explain
21 a little bit more the context of how the Building Code
22 fits -- the Building Code project fits into this overall
23 project.

24 So as we move from meeting to meeting we're going
25 to spend a fair amount of time, and in the next meeting,

1 to better explain that context, and less and less as we
2 move along.

3 We're also going to talk a little bit more about
4 the mechanisms of flooding. And we've essentially -- for
5 a couple of the programs I'm involved with with floodplain
6 mapping and this, we've identified essentially three types
7 of mechanisms:

8 A ponding flow. Like that would be like in
9 Natomas or parts of West Sacramento.

10 And then we have overland flow, where the water
11 essentially moves somewhat lateral or perpendicular to the
12 river. That's kind of like some of our pieces on the
13 upper San Joaquin, the levee breaks and the water flows
14 out over land and then it kind of flows back into the
15 river.

16 And then the third flooding mechanism is kind of
17 channel flow, where the levee breaks and the water kind of
18 flows parallel with the levee system.

19 So essentially the ponding flow has the deepest
20 flood depths.

21 So once we kind of identified the mechanisms, we
22 can identify the different types of threats, threats of
23 the building not sustaining the hydraulic load, threats of
24 people drowning, threats of electrocution, or of explosion
25 related potentially to gas. So there's various types of

1 threats. And we're going to -- from the threats come the
2 solutions or -- the solutions which lead to the provisions
3 which lead to the codes. That's why the three meetings
4 we're going to talk about the context and explain that at
5 the first meeting; explain the mechanisms - that's pretty
6 clear - we'll do that at the next meeting; and then kind
7 of spend a fair amount of time talking about threats at
8 the next two meetings, and then less so as we move along
9 into the third one. Then talk about solutions to those
10 threats. So how do you prevent someone from drowning?
11 Have that clear escape path. Maybe an external ladder.
12 We've talked about various elements like that.
13 Appropriate elevation. And then those type of solutions
14 then lead to provisional language which may lead to the
15 code.

16 So that's essentially how we're going to do it.

17 --o0o--

18 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Let
19 me move ahead here.

20 Talk about how we -- I think this one's important
21 to you -- how we're engaging the Board and its staff.
22 We've had -- we're planning two rounds of public -- as we
23 said, two rounds of public workshops after the first of
24 the year that will reach out to the community officials
25 and to other stakeholders who are not on the Technical

1 Advisory Committee. We'll be -- you know, Dan Fua,
2 Supervising Engineer for the Board, will be participating
3 in our TAC meetings and maybe some of the workshops. I
4 know that he was requested to come before the Board in
5 December. I'm not sure if that's still planned, since
6 we're providing an update on the project rather -- or a
7 status report rather than the actual code.

8 And we'll be reporting to you on a monthly basis
9 through George Qualley's report of DWR activities to the
10 Central Valley Board. And we're always happy to have a
11 special stand-alone presentation.

12 And we're also posting information both on the
13 Floodplain Management Branch website, which is a subset of
14 the Division of Flood Management website; the FloodSAFE
15 website; and then the FloodSAFE calendar. So all our
16 workshops are on the calendar

17 --o0o--

18 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Let's
19 see. Next steps. We're going to plan and conduct the
20 public workshops starting in January. Remember, those are
21 two rounds, we'll go up and down the valley. Probably a
22 minimum of two to four.

23 We're going to continue with our TAC meetings.
24 We have at least three more plans:

25 We're going to document, you know, broader

1 potential flood threats and their paths. Their paths
2 means essentially we're brainstorming how you move from
3 the threat to the potential solution and code. We're
4 going to continue developing the threats and potential
5 solutions.

6 Develop potential code language. We've already
7 got a fair amount of code language written, so we're a
8 little bit ahead of the game working with our internal
9 team. But we haven't had enough time to properly vet the
10 results of that.

11 And then sometime, probably around May or June
12 we'll be submitting the package. We'll come back to the
13 Board to get their input throughout the year. And then
14 May or June we'll be working towards submitting the
15 package to the California Building Standards Commission.

16 --o0o--

17 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
18 that is essentially an abbreviated presentation. I think
19 I'm within my ten-minute goal here. And I'm happy to
20 answer any questions.

21 I think the main message is we're slowing down a
22 little bit, thinking through it. I didn't have much
23 choice but to try to move the project forward to meet that
24 January deadline because those were the cards that I was
25 dealt. And then we thought through and said we believe

1 that the Legislature would be happy to see us make the
2 progress that we have. But I think they would also
3 emphasize the importance of engaging the Board, other
4 technical people on the TAC, and broader stakeholder
5 support through a series of workshops and other forms of
6 communication.

7 So, I'm happy to answer any questions about the
8 Building Standards Project, which is part of the FloodSAFE
9 portfolio.

10 PRESIDENT CARTER: Thank you, Ricardo.

11 Any questions for Ricardo at this time?

12 And, Dan, you're comfortable with your role there
13 and feel that everything's going well?

14 SUPERVISING ENGINEER FUA: Yes.

15 PRESIDENT CARTER: Okay. Thank you.

16 Thank you, Ricardo.

17 Then we'll move on to Item 16, Assembly Bill 156,
18 Risk Notification and Levee Flood Protection Zone Maps.

19 (Thereupon an overhead presentation was
20 Presented as follows.)

21 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.

22 Let me catch my collective breath here.

23 So we call this the Risk Notification Program,
24 and the Levee Flood Protection Zone Maps are a subset.
25 You haven't seen this presentation yet. I believe that

1 Mr. Punia and Mr. Fua and Gary Hester and others know
2 about it. This has been listed in some of the
3 spreadsheets that we put together for the legislative
4 requirements.

5 Essentially Assemblyman John Laird of Santa Cruz
6 was the main author of AB 156. This presentation's going
7 to give you -- and essentially that bill established our
8 Flood Risk Notification Program. This presentation will
9 give you a current status and a little bit of an update on
10 the overall program and will give you an update on where
11 we stand with the Levee Flood Protection Zone Maps.

12 Assembly Bill 156 modified parts of the
13 California Water Code, 9121 and 9130. And I won't read
14 those codes but I'll essentially paraphrase them for you.

15 --o0o--

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
17 Essentially it says -- I think 9121 says by December 31st
18 of 2008, the Department of Water Resources needs to have
19 prepared these levee flood protection zone maps for areas
20 protected by the facilities of the State Plan of Flood
21 Control.

22 And essentially it defined the Levee Flood
23 Protection Zone as the area protected by the levees. A
24 very simple definition that probably requires a little bit
25 more discussion that I'll get to.

1 And then the next section of the Water Code,
2 9130, essentially says by September 2010, the Department
3 will begin notifying property owners in those levee flood
4 protection zones on an annual basis of their flood risk.
5 And it goes through a description of the various things
6 that would be included in that communication.

7 So what we're planning essentially is the overall
8 program is the risk notification, the levee flood
9 protection zones are the maps that we use then to
10 determine who's protected by the project levee. And then
11 this mapping effort that we're going to do with some new
12 hydraulic model. And we have some preliminary maps where
13 we've met the legislative requirements of 9121. But
14 eventually we will have maps that will show the flood
15 depths greater than three feet. And it will actually show
16 the flood depths. And then from that -- from parcel data,
17 GIS information we'll be actually able to compute damages
18 to the property based upon the type of property. And
19 we'll write a letter to the property owner essentially,
20 you know, "This letter is required as part of Assembly
21 Bill 156, the Flood Risk Notification Program. Your
22 property is located at this address. You are near these
23 river channels that are protected by these levees that are
24 part of the State Plan of Flood Control that are
25 maintained by agency XYZ," or plural agencies. "If one of

1 these levees were to fail, flood depths at your properties
2 could be" -- whatever computed depth we have. "And the
3 damage to your property could be" -- a certain amount,
4 given certain assumptions. "We recommend that you be
5 aware of this risk, that you have a family evacuation
6 plan, that you be aware of your community's emergency
7 evacuation process, that you also consider taking other
8 flood mitigation measures such as buying flood insurance.
9 And here's the way to contact FEMA about flood insurance
10 or adopt other flood mitigation strategies."

11 So this is the direction that the Corps of
12 Engineers is going with and also FEMA. And our program,
13 essentially FEMA's very interested in it because they have
14 a major program that's starting next fiscal year called
15 Risk Map, and essentially they're kind of seeing this as a
16 pilot program. We developed this independently of FEMA.
17 And they're very, very interested in it because it's doing
18 exactly what they want. They want people to understand
19 the risk and then to adopt mitigation measures.

20 --o0o--

21 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

22 Essentially this is a slide explaining kind of
23 where -- the process that we're going through. The levee
24 flood protection zone maps as indicated, that's Phase 1.
25 We need to be done by 12/31/2008. We have draft maps

1 prepared, and we've gone through a lot of technical effort
2 to do that.

3 So essentially we've met the legislative
4 requirement. The legislative requirement does not require
5 that we transmit those maps yet. And it says eventually
6 we should put those -- or it says we should put those on
7 an Internet website, and we will eventually do it. But it
8 doesn't say what date we have to put those on. So we've
9 essentially met that requirement.

10 Phase 2 is the September 2010 where we start the
11 annual notification.

12 And Phase 3 is where we repeat the notification
13 on an annual basis.

14 --o0o--

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
16 essentially we're in Phase 1 trying to refine the maps.

17 I've already defined what a levee flood
18 protection zone is. It's the area protected by the levee.
19 We assume water at the top and we assume essentially that
20 there's an unlimited supply of water.

21 We have a couple technical papers that we've
22 written on how to define a levee flood protection zone
23 map. And the legislation essentially said for the
24 December 31 -- this is pretty big technical endeavor --
25 for the December 31 deadline we are to use best available

1 data. And we used three sources of data. We did the work
2 internally within the Division of Flood Management. We
3 used comprehensive study model data; we used a projection
4 of the top of levee with some adjustments, kind of done in
5 a GIS environment; and then we used something called
6 "population protected by levee boundaries" that our
7 consultant, PBS&J, did.

8 So we developed these three sets of maps for all
9 areas. And then our consultant teams help us refine
10 those.

11 So essentially I've already talked about -- a
12 little bit about the flooding mechanisms, ponding, channel
13 flow, and overland.

14 So now I'll show you kind of the draft maps.

15 --o0o--

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: This
17 first one is essentially on the San Joaquin -- with the
18 San Joaquin here on the left and the Stanislaus on the
19 right. And the orange colors are the deep ponding -- or
20 the potential ponding areas. Those are closer to the
21 levees. We're near the confluence of the levees. And
22 that's the areas where the notification would apply
23 because it's -- we estimate the flood depths are greater
24 than three feet. The yellow areas are more channel -- I'm
25 sorry -- overland flow areas. So we wouldn't be sending

1 notice out there.

2 So these were put together by our consultants
3 based upon the preliminary work that we did. And we have
4 this for the entire 1600 mile levee system. So it was a
5 major endeavor on all our parts.

6 --o0o--

7 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: This
8 is a second draft levee flood protection zone map, showing
9 the Bear River, and Dry Creek on the right, and the
10 Feather River on the left. So the area kind of in the --
11 the area between the Yuba and the Bear is RD 784, and it's
12 appropriately shown as a ponding area.

13 --o0o--

14 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Let
15 me show you where we'll be going, our next steps.

16 Essentially we prepared - as in past tense - the
17 draft maps. And we've met the legislative requirement of
18 December 31st. We're going to meet with agency's tech --
19 the agency technical representatives in a series of four
20 workshops in the month of December. And my colleague
21 Christina Kwo, who's I believe in the back of the
22 auditorium, she's the project manager for this project.
23 So we'll be communicating with the agency technical
24 officials.

25 Those aren't public meetings. We're not going to

1 check IDs at the door. But they're essentially for the
2 public works folks and other folks who would be looking at
3 these map for the first time. We're going to get their
4 comments, leave them sets, get their comments back, and
5 then revise the maps as appropriate.

6 Then we're going to finalize the maps and then
7 send them out again to the communities, and potentially --
8 we haven't decided when we'll post them on the website, as
9 preliminary or final. And then we'll have -- after the
10 beginning of the year we may have a series of public
11 workshops that goes beyond the community officials.

12 So I think we have a very robust schedule, like
13 we did with the best available maps, the BAM maps. I
14 think after Thanksgiving we'll put together a set of maps
15 and CDs and send them to Gary Hester and Jay Punia and at
16 the Board offices, so you'll be welcome to come in and
17 review those and provide us any comments. And of course
18 we encourage the Board staff to come to any of the
19 workshops we have with community officials or with the
20 public after the first of year.

21 --o0o--

22 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
23 again this is a FloodSAFE project. It's one that had a
24 deadline of December 31st. We felt we met that deadline
25 by preparing the draft maps. And we really look forward

1 to get your input and to give us a guidance if you have
2 any -- think that we should have a modification as to what
3 we're talking about.

4 PRESIDENT CARTER: Thank you.

5 Any questions for Mr. Pineda?

6 VICE-PRESIDENT HODGKINS: Ricardo, I think it's
7 hard for the Board, at this point, to give you much in the
8 way of guidance. But when you begin to mail
9 notifications, are you going to try and do any focus
10 groups to try and make that the most effective message you
11 can?

12 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

13 Member Hodgkins, that deadline is the 2010. We
14 thought about it. Essentially, there are some excellent
15 people out there, consultants that work in risk
16 communications. And I got the paper, and I'd be happy to
17 send you one, that -- a paper on flood risk communication.
18 And I think the name of the firm was Booz Allen or
19 something. But essentially I met the gentleman who helped
20 put that together with General Jerry Galloway, who all of
21 you know. And we may engage someone like him to help us
22 really frame our notification letter that I kind of stated
23 to you in a very, very preliminary form.

24 So we may go -- you may have a great idea, to put
25 together some focus groups. I've never -- I've been a

1 participant in a focus group, but I've never kind of run a
2 focus group. So --

3 VICE-PRESIDENT HODGKINS: Well, it's interesting
4 to watch one, because people take off in directions you
5 never would have anticipated, in looking at your step.

6 But the second question. Do you think people
7 will be able to identify how deep the water would be at
8 their house? I see on the maps it's in a range. Is there
9 any way to make it more informative in the individual
10 notifications?

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.
12 This wasn't part of my presentation. But, remember, these
13 maps are based upon available data. The comp study data
14 did have depths associated with it, but there were a lot
15 of issues with using the comp study models. That's why we
16 struggled internally so much and brought in our regional
17 mapping contractors to help us fine-tune it. So for the
18 preliminary preparation of the maps, which is the December
19 31st, these are the maps we're going to use where we just
20 have greater than three feet or less than three feet.

21 But for the 2010 deadline was where we actually
22 write the letter, by then we will have new lidar
23 topography flown for the floodplains and we'll have the
24 use of flow 2D models. That's pretty much all we need is
25 the lidar and the flow 2D. We've already got everything

1 kind of in GIS where the levees are. And we plan to make
2 new model runs using flow 2D, which is a two-dimensional
3 model. We've talked about that earlier about the Sutter
4 bypass. And the new lidar, the new layout of the ground,
5 and we will produce flood depths. So we think that we're
6 going to have much more detail for the September 2010
7 maps.

8 So these aren't the maps that will be used.
9 Right now these are the maps that we have. And by 2010 we
10 think we'll have a much better refined product.

11 VICE-PRESIDENT HODGKINS: Good.

12 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

13 So that's the plan.

14 SECRETARY DOHERTY: How much does 2D cost?

15 (Laughter.)

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Well,
17 Nathan -- this is my colleague Nathan. Do you know how
18 much -- the software isn't that expensive. It's running
19 it -- running the models and the consultant time or the
20 staff time to do it.

21 But I agree. I think I gave that number to Keith
22 Swanson for the Sutter -- I gave him the number and to his
23 staff that the Yolo Bypass model was -- the Corps did it
24 in two steps. And we received a CALFED grant. My group
25 applied for a CALFED grant four or five years ago. And we

1 have -- we got one to finish off the model. So I think we
2 spent about 500,000. But you have to maintain the data
3 and maintain the model and write a user's manual. This is
4 applying 2D modeling at a much smaller scale.

5 SECRETARY DOHERTY: So that included a lot of
6 things, not just like one little section?

7 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
8 The Yolo Bypass model?

9 SECRETARY DOHERTY: Well, the Yolo -- no. So the
10 Sutter Bypass would be a smaller area?

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yeah,
12 I think it is smaller than the Yolo Bypass. Yeah, you
13 have to have good topography. The topography that we used
14 for these are ten meter USGS digital quad maps translated
15 to three-foot contours. That's really pretty rough
16 terrain data.

17 SECRETARY DOHERTY: So the roughness coefficient
18 and --

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yeah,
20 yeah. But it doesn't really give you a true picture of
21 the ground. A very rough estimate. But what we flew we
22 spent -- DWR Flood Management spent millions -- and I
23 can't tell you the exact amount -- I think over 25 million
24 flying topographic surveys over the whole project and
25 beyond. And so that data is being processed right now.

1 I'll talk about it in a mapping presentation. And that
2 data is available for the Sutter Bypass model to use.

3 So we'll have better maps for this when we
4 actually mail out the letters, with flood depths. And we
5 need to translate that flood depth into usable
6 information.

7 BOARD MEMBER RIE: A question.

8 PRESIDENT CARTER: Go ahead.

9 BOARD MEMBER RIE: And what are your assumptions
10 when you come up with those ponding depths? Are you
11 assuming levee overtopping or multiple breaks, how far
12 apart are they? I'm just curious, because you're going to
13 get different results depending on what your assumptions
14 are.

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Well,
16 for the preliminary maps that we have just completed, and
17 we may refine based upon input, I said we looked at a
18 variety of data sources and looked what types of -- for
19 the comp -- we used the comp study for part of this. And
20 that essentially we tried to pick the floodplain
21 associated with the water surface profile that the comp
22 study models ran that was closest to the top of the levee.

23 When we actually run flow 2D, Member Rie, we'll
24 essentially break the levee with the water at the top of
25 the levee. And there's some algorithms that define how

1 big of -- you know, is it going to be a 300-foot break or
2 a 400-foot break? And consider maybe we have like a
3 rectangular -- a rectangular basin, maybe like Natomas or
4 some other areas. We would model the levee break on the
5 west side, the north side, the south side, and the east
6 side and project it out, determine the flood depths, and
7 then pick the highest flood depth to develop the composite
8 map.

9 So I can't tell you -- you know, we may decide to
10 do two levee breaks on one side. There's not going to be
11 a lot of sensitivity analysis. In ponding areas it may
12 not make that much of a difference. But do you remember,
13 the levee flood protection zone assumes what area is
14 protected by the levee, not at the design water surface
15 elevation, but water all the way to the top. And we've
16 never really seen that on our major systems. We have on
17 some of the smaller streams, Cache Creek, Butte Creek,
18 water's gone to the top of the levees. And then it goes
19 up and then it goes down or even overtops.

20 So this is kind of a whole new thing. So the
21 floodplains will probably be bigger than the hundred-year
22 floodplains and in some cases maybe approach the 500-year
23 floodplains out of the comp study model. So there's going
24 to -- when we actually get the flood depths and the
25 analysis, we'll have to do a fair amount of sensitivity

1 analysis.

2 BOARD MEMBER RIE: So basically what you're
3 assuming is the water is at the top of the levee all along
4 the system? So when you're looking at Natomas, for
5 example, you're not taking into consideration there might
6 be levee breaks upstream?

7 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yeah,
8 you assume essentially an unlimited supply of water for
9 that particular levee break.

10 BOARD MEMBER RIE: Okay.

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
12 I'm happy to provide also, if you'd like -- you know,
13 we've written some -- we work with our consultants pretty
14 much. We have, it seems like, the best people in town
15 here and we've put a fair amount of effort into putting
16 some technical memorandum together. So if you're
17 interested, I'll be --

18 BOARD MEMBER RIE: Sure.

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
20 -- happy to forward it on to Jay and he can
21 forward it up to you.

22 BOARD MEMBER RIE: You have my Email?

23 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yes,
24 I do.

25 BOARD MEMBER RIE: You can send it to me

1 directly.

2 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.

3 Very good.

4 SECRETARY DOHERTY: Ricardo, I just want to
5 ascertain -- so that I understand. Could you because of
6 what you have done with 2D modeling lift Sutter Bypass
7 modeling out of that?

8 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Not
9 the levee flood protection zone modeling. And you
10 remember -- and I'll be describing in the Central Valley
11 Floodplain Evaluation and Delineation, we'll be improving
12 the existing hydraulic models, which are all one unsteady
13 state 1D for the Sutter. So when we're done with that, we
14 certainly can provide Keith or anybody else the updated
15 model for the Sutter Bypass. The Sutter Bypass -- this
16 model -- the LFPZ modeling that we'll do related to the
17 Sutter Bypass is essentially modeling what areas landside
18 of the Sutter Bypass are -- you know, what are the
19 floodplains landside of the Sutter Bypass, not so much
20 internal to the Sutter Bypass.

21 So the LFPZ 2D modeling isn't really applicable
22 to the 2D modeling, Lady Bug, that you were referring to.
23 But we are -- the good news out of this is the topographic
24 one-foot contour data are super accurate to the best we
25 can is going to be available if we decide -- if jointly we

1 decide and with the other stakeholders decide to develop a
2 2D model. That's going to be a big cost savings. That
3 was a big cost element of the Yolo Bypass model, getting
4 the good topography.

5 So I think we're on a good track. We just have
6 to decide who pays for the 2D, you know, if that's the
7 path everyone decides to take.

8 PRESIDENT CARTER: Thank you very much.

9 Butch, you had something else?

10 VICE-PRESIDENT HODGKINS: One last comment
11 suggestion.

12 In your outreach, I think it's important to make
13 a specific effort to outreach to BIA to the northern
14 industry. I think they're going to express concerns about
15 scaring people. But you're better off hearing those
16 before you mail things rather than after.

17 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.
18 That would be great. We'll hopefully maybe start engaging
19 them, you know, right after the beginning of the year,
20 maybe before we go have public workshops. And we already
21 have an excellent contact with Mr. Bob Raymer, who I know
22 has a very good position with the BIA as part of the
23 Building Codes project.

24 VICE-PRESIDENT HODGKINS: Okay. Well --

25 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I

1 think he's one of their chief engineers or something.

2 So that's a very good suggestion.

3 PRESIDENT CARTER: Very good. Thank you.

4 We'll move on to Item 17.

5 (Thereupon an overhead presentation was

6 Presented as follows.)

7 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.

8 This is the Central Valley Floodplain Evaluation and

9 Delineation Program (CVFED).

10 The reason I'm here, as I mentioned in kind of
11 the opening, is that the Senate Bill 5 requires the Board
12 to adopt the mapping schedule by December 31st. So at the
13 next meeting either through a consent or through a normal
14 agenda item we'll be asking you to approve the draft
15 schedule -- or approve the schedule. And I'll even show
16 it to you in draft here in a few minutes.

17 --o0o--

18 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
19 essentially the purpose for this presentation is to inform
20 the Central Valley Flood Protection Board of the proposed
21 mapping schedule that needs to be approved by the December
22 2008 meeting.

23 --o0o--

24 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I'm
25 not going to read through the legislation. But

1 essentially it talks about that December 31 deadline and
2 that we have to come back to the Board on an annual basis
3 and give you an updated schedule for mapping and tell you
4 what we've accomplished and what we plan to accomplish in
5 the future.

6 You know, a lot of the activity that I'm involved
7 with with FloodSAFE we always wanted to do. And we really
8 didn't need the legislation to tell us to do it, but we
9 needed the funding. So the legislation combined with the
10 in funding in 1E and 84 gave us that mechanism. And many
11 of these programs we had planned out and been putting in a
12 budget request before the legislation was even passed.

13 So mapping has been one that we've had some
14 activity going on but has been on a very limited basis.
15 So the 1E and 84 and enhanced general fund gave us that
16 ability.

17 So, bottom line, we'll be back in December for
18 approving the schedule and back every year after that
19 until we essentially finish the program.

20 --oOo--

21 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I
22 want to describe to you the team, because this is one that
23 we put a lot of effort into and I think we've built up an
24 excellent team. All three of the projects I've discussed
25 today, this being the third, are under FloodSAFE Planning.

1 And Mr. Ken Kirby, consultant to DWR, is the portfolio
2 manager. Tom Christensen, he focuses on the day-to-day
3 activities of the mapping program. And he's the -- under
4 the FloodSAFE terminology, he's the program supervisor.
5 And I'm the branch chief that has the mapping staff and
6 kind of the contract management and budgeting and kind of
7 involved with a little bit of everything related, and so
8 I'm the functional manager.

9 --o0o--

10 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
11 our main mapping team, we have about -- let's see, 1, 2 --
12 we have four staff members and we're probably going to be
13 adding some. But we've also got mapping activities going
14 on in southern California related to alluvial fans. But
15 pretty much have four people focusing on the Central
16 Valley and other parts of California.

17 Our consultant team consists of the firm of
18 PBS&J, who is helping us with program management
19 activities for the CVFED and also with floodplain
20 management activities statewide.

21 We have the firm of CH2M-Hill helping us on the
22 upper Sacramento. And these teams all have a long list of
23 subcontractors.

24 We have the firm of Wood Rodgers. Fran Borcalli,
25 who was up before me, is with the firm of Wood Rodgers.

1 They're helping us on the lower Sacramento.

2 The firm of RBF on the upper San Joaquin.

3 And the firm HDR on the lower San Joaquin.

4 And we put a huge amount of effort to hire these,
5 to go through the contracting process. And we think we
6 got a fantastic team. HDR did the engineering for the
7 SJAFCA project, and so they are very familiar.

8 CH2M-Hill, you know, they have their headquarters
9 in I believe Redding. So they have a lot of experience on
10 the upper Sac.

11 So all the teams have some specialty for their
12 geographic area, and it's really working out great. And
13 they're providing technical support to Steve Bradley's
14 program because of the experience they have with hydrology
15 and hydraulics.

16 --o0o--

17 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

18 Here's the basic mapping schedule that we may
19 show you in this exact format, or we may change it
20 depending upon your comments or anything else that changes
21 between now and December.

22 I've already mentioned that we've been working on
23 the topography. We've already flown the lidar. We're
24 still working on surveying in some land monuments. It's
25 been pretty tricky down in the lower -- I'm sorry -- the

1 upper San Joaquin because of land subsidence. And we're
2 post-processing the data. And we hope to be done with
3 that by June 2009. So at the end of that process for the
4 topography, we'll have the kind of the digital elevation
5 models that can be used by floodplain mapping and other
6 programs within DWR. And once we kind of go through
7 security issues, communities could ask for that same data.

8 We're working on kind of redoing the hydrology
9 from the comprehensive study, all the hydrology for the
10 Central Valley. And that's being done by the Corps
11 through a multimillion dollar interagency agreement. Gary
12 Bardini of Flood Management and Art Hinojosa are taking
13 the lead. And we hope to have that completed by 2010.

14 PRESIDENT CARTER: Ricardo, on the topography,
15 how do you handle vegetation, because it grows?

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yeah,
17 we had to fly -- we flew kind of last year in the leaf-off
18 period. So you have to -- we were in a mad rush
19 administratively to get everything in place and get the
20 task orders issued to fly last winter when the leaves were
21 off.

22 PRESIDENT CARTER: And so you're trying to find
23 ground elevation. What happens in the case where they're
24 evergreens and, you know -- or there's brush or tules?

25 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I

1 think they've sent out ground crews to do that. I know
2 that we're doing some bathymetry, meaning that we're
3 surveying the river cross-sections, and we've taken
4 advantage of work that the Corps and others have done for
5 the levee cross-sections and getting the levee profiles
6 and adding to that.

7 But I think anything that we can't -- President
8 Carter, that we can't get through the lidar we're doing
9 with land crews. And we've actually had some issues both
10 in the Sacramento Basin and the San Joaquin Basin where
11 we've been told to leave private property or leave
12 property -- we don't know who the owner was -- for various
13 reasons. But in every case after we have our surveyors
14 carry identification and a letter explaining their
15 projects, so we've been able to work that out. So bottom
16 line is we send in the ground crews to get that data where
17 it's not showing up appropriately in the lidar.

18 PRESIDENT CARTER: Thank you.

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.
20 So the hydrology is being done by the Corps. But we also
21 have hydrology capacity within our four regional contracts
22 if there's something missing, because there's always --
23 the Corps is focusing on the mainstream. So there may
24 be -- for floodplain evaluation and delineations,
25 essentially floodplain mapping, there may be some streams

1 that we have to know the hydrology on that wasn't in the
2 Corps interagency, and so we've got that capacity to do
3 additional hydraulics.

4 Riverine hydraulics, we want to be done by June
5 2010. And essentially -- I know Teri knows a lot about
6 modeling and Butch and some of the other Board members.
7 But the models that the comp study worked in were UNET.
8 They're unsteady state, one dimensional. And the new
9 standard that everyone's using is essentially HEC-RAS. So
10 there's a few people, some folks at MBK and others and
11 from the Corps, they can still run UNET. But our staff
12 here runs HEC-RAS, and other staff within Flood. So we
13 have to convert those models.

14 So in some cases we're in this big process. The
15 Corps is converting part of the unit for the Sacramento.
16 We converted the San Joaquin model. And then we have to
17 do some additional pieces. And then as new information's
18 available we'll rerun those models and test them and
19 determine where we need to totally redo them. But we're
20 trying to use -- take advantage of the work that's already
21 done. But it's kind of like rebuilding an engine
22 completely, and we've got to make sure that it works when
23 it's all done and meets all this performance
24 characteristics.

25 So we hope to be done by June 2010. That's for

1 the river model.

2 The floodplain model is what I was talking about
3 the flow 2D. So the water is between the river -- between
4 the levees. That's the HEC-RAS model. But when you break
5 the levee, you want to know where the water goes out into
6 the floodplain, that's the flow 2D model. So we hope to
7 have those up and running by January 2011. And then we'll
8 have draft delineated floodplains in July 2011 and final
9 ones by December. So that is a pretty ambitious schedule
10 considering we have 1600 miles of levees and our task
11 withdrawing all the floodplains associated with them. But
12 because we have our four AECs and an excellent support
13 staff in DWR, we think we can make that deadline.

14 --o0o--

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Catch
16 my breath here.

17 BOARD MEMBER RIE: Question.

18 Who's doing the HEC-RAS?

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Who's
20 going to actually run it or who's doing the conversion?

21 BOARD MEMBER RIE: Both.

22 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.
23 The conversion -- PBS&J's doing the conversion from UNET
24 to HEC-RAS for the Sacramento system. And then the Corps
25 is doing the conversion of the UNET to HEC-RAS for part of

1 the Sacramento. Some of our staff are working on
2 conversions for other parts of the Sac. And then we'll
3 use Wood Rodgers and CH2M-Hill to finish that off.

4 So the Corps had to do the conversion because
5 they're involved with the American River Common Features
6 Project. So they needed to have a usable model. And
7 there were too many dueling models floating around. So
8 hopefully this model, they're going to take -- the Corps
9 is going to take advantage of all the improvements that
10 firms have done as part of local projects. So that's been
11 a big issue with some of the EIPs. The Corps has a model
12 and the locals take it and improve it and probably, you
13 know, get better results. But it's not the official Corps
14 model. So all this will hopefully work to resolve that.

15 BOARD MEMBER RIE: So who's going to run the
16 models?

17 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Our
18 staff and the consultants.

19 BOARD MEMBER RIE: DWR staff?

20 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: DWR
21 staff and the consultants, yeah. We're not there yet to
22 actually start doing that work. We're probably going to
23 work a lot on the LFPZs and they will work on -- I'm going
24 to go through the next -- the mapping priorities. And
25 between the consultants and DWR staff, hopefully we'll get

1 it all done by that deadline. But it's going to be a
2 combination.

3 BOARD MEMBER RIE: Are you guys going to model
4 the tributaries?

5 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Our
6 goal is to delineate 10, 25, 100, 200, and 500 for all the
7 floodplains associated with the 1600 miles of levees. So
8 if it falls under that category, we're going to try to do
9 it.

10 So some tributaries, yes, that have project
11 levees. But if you have to evaluate a nonproject levee or
12 an unleveed area to get the floodplain right for the
13 project levees, we'll do so.

14 BOARD MEMBER RIE: Sounds pretty ambitious.

15 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Yeah,
16 it is very ambitious.

17 President Carter, how are we doing on time on
18 this?

19 PRESIDENT CARTER: We'd like to wrap it up.

20 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Okay.
21 Well, let me -- I won't go through in detail all the
22 slides. I'll just kind of hit them real quickly.

23 We've got about five or six mapping priorities
24 that we're going to be running all these models. We need
25 to determine 500-year floodplains for the Sacramento and

1 San Joaquin basins focusing on the State Plan of Flood
2 Control. That's that 1600 miles. Why do we have to do
3 that? Because that ties into the requirements of the
4 Water Code 85007, which was part of SB 5 related to that
5 magic 200-year level of protection and where communities
6 have so reach that.

7 So I don't want to go into the detail of mixing
8 200 and 500. But if you have to reach 200, there's a link
9 to being in a moderate flood hazard area as delineated by
10 FEMA. So that's a 500-year floodplain. So we want to get
11 the 500-year floodplains delineated.

12 --o0o--

13 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: We
14 also want to correct hundred-year floodplain maps that
15 FEMA has wrong. So that's why we talk here about we want
16 to identify and rectify differences between the FEMA
17 100-year (1 percent) flood maps and DWR's best available
18 maps. So where FEMA has it wrong, we want to make sure we
19 do some analysis or give FEMA as much data as possible to
20 get the hundred-year floodplains right for the National
21 Flood Insurance Program.

22 --o0o--

23 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: The
24 third mapping priority is we want to do essentially
25 detailed floodplain analysis. These are for the planning

1 floodplains that deal with project alternatives computing
2 the benefits of making project modifications for the
3 10-year floodplains, the 50-year floodplains, 200, and
4 500. So these planning floodplains are different than
5 kind of FEMA floodplains. And so essentially we're
6 emulating what was done in the comprehensive study. So
7 you do a floodplain to show what's the existing
8 conditions. And if you modify the project by raising a
9 levee or setting it back, you're reducing the size of that
10 floodplain. Reducing the size of a floodplain is an
11 economic benefit because people don't get as wet. That
12 becomes a benefit in the benefit/cost analysis.

13 --o0o--

14 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: The
15 next one we'll be doing again is the 200-year floodplains.
16 And we will be doing that in support of the Building Codes
17 project, which says you have to follow the building codes
18 once they're adopted if you're in a 200-year floodplain
19 where flood depths are greater than three feet for
20 facilities of the Central Valley Flood Protection Plan.
21 And also 200-year floodplains relate to that 200-year
22 level of protection for urban and urbanizing areas in the
23 Central Valley.

24 --o0o--

25 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: The

1 last one - I don't have to say much because we just had a
2 whole presentation on it - is we need the levee flood
3 protection zones. So we'll be using -- we did the
4 preliminary maps right now. And then we'll be using the
5 new topo and flow 2D to develop more refined levee flood
6 protection zone maps.

7 --o0o--

8 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: The
9 last mapping priority is -- DWR is the CTP and we're
10 updating our CTP agreement with FEMA. CTP stands for a
11 cooperating technical partner, essentially an agreement
12 with FEMA that says we'll do this and you'll do that and
13 together we'll improve FEMA's floodplain maps, which are
14 very important. So whatever data that we develop as part
15 of our CVFED program that FEMA could use to have more
16 accurate regulatory 100- and 500-year floodplain maps,
17 we're going to provide FEMA. So we meet with them on a
18 regular basis. And DWR's involvement with FEMA has really
19 been enhanced over the last couple years and we think
20 that's great. They're another major player like the
21 Corps.

22 --o0o--

23 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So
24 that wraps it up. And happy to answer questions. And
25 we'll be back in December either as a regular item or a

1 consent item to approve that schedule that you saw earlier
2 in the presentation. So thank you for bearing with me at
3 this late hour.

4 PRESIDENT CARTER: Any other questions?

5 VICE-PRESIDENT HODGKINS: Is the two-dimensional
6 model in the bypass done with flow 2D or RMA2, do you
7 know?

8 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: In
9 the Yolo Bypass?

10 VICE-PRESIDENT HODGKINS: Yes.

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: RMA2,
12 I recall.

13 VICE-PRESIDENT HODGKINS: Okay. So flow 2D
14 doesn't have the problems with wetting and drying that
15 RMA2 has?

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: To be
17 honest with you, I don't have enough information.

18 VICE-PRESIDENT HODGKINS: You better hope not.

19 (Laughter.)

20 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: And
21 that model is run by the Corps. We haven't run the RMA2.
22 And there's a big issue with maintaining the model. So I
23 wouldn't be surprised if we ask the Corps to make some
24 Yolo Bypass 2D runs, and they could say, "It's not running
25 on our computer right now."

1 So that when we make a -- if the Board makes the
2 decision collectively with DWR to do a model for the
3 Sutter Bypass, we have to look at model maintenance.

4 VICE-PRESIDENT HODGKINS: Okay.

5 PRESIDENT CARTER: Any other questions for
6 Ricardo?

7 SECRETARY DOHERTY: When you say model
8 maintenance, yeah, what do you mean by model maintenance?
9 You mean change it every day according to something that
10 changes on the earth or something?

11 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Well,
12 a couple of things, Board Member Lady Bug. There's one
13 hardware change -- computer's changed. So you can run a
14 computer program. It will run on your computer today.
15 And then they bring you a new enhanced new model for 2009
16 and suddenly some of the software that was running on your
17 old computer doesn't run. So there's that issue.

18 There's also the issue that when changes occur in
19 the Yolo Bypass, like modifications to the Vic Fazio
20 wetlands, then that needs to be modeled and those changes
21 need be put in the model to keep it current.

22 So we have haven't talked to the Corps much about
23 the status of the RMA2 model in the Yolo Bypass. So it
24 has to be -- the physical characteristics of the bypass
25 need to be kept an eye on. And just keeping the software

1 running is also a challenge.

2 So now there's new surveys. In fact, we're now
3 using NGVD 88 rather than NGVD 29. And there's some
4 differences there. And so really that model probably
5 needs to be converted to the new way we're looking at
6 survey data, 29 to 88.

7 SECRETARY DOHERTY: And so you charge people for
8 updating your computers as part of your project?

9 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:
10 Updating the model?

11 SECRETARY DOHERTY: When you bring in new
12 components for your computer.

13 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: For
14 our physical computer?

15 SECRETARY DOHERTY: Yes.

16 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: And
17 what is the question?

18 SECRETARY DOHERTY: So who pays for that?

19 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: Well,
20 just updating our computers is just kind of our overhead
21 costs. But when we find out that our old computer program
22 like the Yolo Bypass 2D doesn't run anymore, that's for us
23 or for whoever has that model to figure out. So right now
24 that RMA2 model is resident at the Corps of Engineers at
25 1325.

1 SECRETARY DOHERTY: Okay.

2 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: So we
3 paid to have the Corps develop it. We got a CALFED grant.
4 And we had them write a user's manual. But I haven't
5 heard much for the last couple years. I don't think it's
6 been used as much as it could have been. There hasn't
7 been a flood of --

8 SECRETARY DOHERTY: Well, it's going to waste, so
9 we need to use it, huh?

10 PRESIDENT CARTER: Any other questions for
11 Ricardo?

12 Ricardo, thank you very much.

13 FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: My
14 pleasure, sir.

15 PRESIDENT CARTER: Thank you for your patience.
16 Thank you for going through that quickly.

17 Item 18, Board Comments and Task Leader Reports.

18 Maybe we'll just go down the table.

19 Mr. Brown, do you have anything you want to
20 share?

21 BOARD MEMBER BROWN: Let's see. Nothing new,
22 except that flight I made over the TRLIA project and the
23 Sutter Bypass. And I open that up to any of the Board
24 members. I guess we can take up three of us at one time
25 that may push to do that.

1 PRESIDENT CARTER: We'd have to notice that.

2 BOARD MEMBER BROWN: Not with just three Board
3 members.

4 PRESIDENT CARTER: More than two you have to
5 notice.

6 BOARD MEMBER BROWN: Oh, you do?

7 PRESIDENT CARTER: Yeah.

8 BOARD MEMBER BROWN: Okay. Then two Board
9 members.

10 SECRETARY DOHERTY: If he's the pilot, then three
11 of us can go.

12 (Laughter.)

13 PRESIDENT CARTER: Okay.

14 BOARD MEMBER BROWN: I thought it was a quorum
15 for the Brown Act. Isn't it?

16 PRESIDENT CARTER: Well, I'll defer to Ginny.
17 The guidance I've received is more than two. And it's a
18 Bagley-Keene issue, not a Brown Act issue.

19 LEGAL COUNSEL CAHILL: You certainly can't have
20 more than a quorum. And if it's a subcommittee, it's only
21 two. So there may be some gray area where there's not
22 formally a subcommittee. But it's less than four.

23 BOARD MEMBER BROWN: Well, this would be no
24 subcommittee, I don't think.

25 But in any case, Mr. Chairman, the offer's there.

1 PRESIDENT CARTER: Thank you.

2 BOARD MEMBER RIE: You're offering to fly us over
3 the --

4 SECRETARY DOHERTY: Take her.

5 BOARD MEMBER BROWN: Sure.

6 VICE-PRESIDENT HODGKINS: There's water in it
7 this year. We'll pay for the gas. And you can take us up
8 differently, but let everybody see it with water in it.

9 BOARD MEMBER BROWN: Well, the offer's on the
10 table, Mr. Chairman. And I know Mr. Hodgkins --

11 BOARD MEMBER RIE: Thank you very much.

12 BOARD MEMBER BROWN: -- has already said he'd
13 like to do that.

14 PRESIDENT CARTER: Lady Bug.

15 SECRETARY DOHERTY: Oh, yeah. Every time it's
16 always so late and I don't want take up time. But I went
17 on two wonderful tours. And I do have to tell you. One
18 was the water education tour. And of course we saw all
19 the empty dams and Whiskey Town and Iron Mountain clean-up
20 area. Learned about the quagga and the zebra mussels.
21 And be on the lookout for them.

22 Who told me about the dog that could smell the
23 mussels today?

24 PRESIDENT CARTER: That was me.

25 SECRETARY DOHERTY: Ben told me. And it is going

1 to be a true danger here in California if they get into
2 our lakes and our streams because they are going to plug
3 up our fish streams on the river. There's no question
4 about it.

5 And then I went with this Don Meisner, who
6 retired from George Qualley's position. Most interesting.
7 Of course there we looked at Little Chico Creek, we looked
8 at this Yolo Causeway -- the thing that Mr. Borcalli was
9 just talking about, the weir. And it was also excellent.
10 I have seen all of these areas before. But both of these
11 things tied everything in together, and really how the
12 system works. And I think that every single Board member
13 should be required to go on these tours. They were just
14 excellent. And I just wanted you to know how good they
15 were.

16 I sent an Email out and -- of course Butch was
17 able to go. And the reason for the Meisner tour was
18 because everybody that has been working for the Department
19 hasn't been around the floods. I mean all the old people
20 have retired and it's just the young people that are out
21 there. And they just don't understand this whole system.

22 So I think he's really doing a good job. So I
23 just wanted to pass that on if you ever have a chance
24 to --

25 BOARD MEMBER RIE: Maybe Jay can organize a tour

1 for us.

2 EXECUTIVE OFFICER PUNIA: Yeah, we'll be glad to.

3 Next year the Department is going to arrange to hire Don
4 Meisner to give the tour. And we will definitely include
5 an opportunity for the Board members to go.

6 BOARD MEMBER RIE: Okay.

7 PRESIDENT CARTER: Teri.

8 BOARD MEMBER RIE: Well, the Corps just last week
9 approved yet another clarification memo on 408. And I'm
10 not sure if you made a copy for the Board members.

11 EXECUTIVE OFFICER PUNIA: Not yet. But we'll be
12 circulating to all the Board members.

13 BOARD MEMBER RIE: Yeah. If it would be possible
14 to maybe Email that. It's a Corps document, so it's
15 purely informational. It's not anything that the Board is
16 going to act on. It was signed by Mr. Stockton. So it
17 would be good for the Board members to take a look at
18 that.

19 I could talk more, but I'm too tired.

20 (Laughter.)

21 PRESIDENT CARTER: Butch.

22 VICE-PRESIDENT HODGKINS: Yeah. I think the 408
23 guidance that's coming out, one of the things that is
24 going to happen in connection with it is the task force is
25 going to look at it carefully and develop a set of

1 questions and concerns. And then we're going to go over
2 those with the Corps to make sure we're all sort of on the
3 same page in terms of what some of it means. The issue of
4 risk and uncertainty, the R&U analysis, is not resolved.
5 It requires R&U for 408. But the nature of how that will
6 be done, DWR continues to work with the Corps and we're
7 just -- we're not there yet.

8 But it was nice in a way I think to see the
9 guidance out. We did have a conference call with Steve
10 Stockton a week ago today, I think. And he agreed in that
11 meeting to make one small change to it, which was
12 important in that it was a change to the criteria for a
13 judgment as to what goes into 408 and what can go forward
14 under 20810. And he added the word "reasonable" to -- or
15 "significant." Previously, the guidance said "any"
16 hydraulic impacts with -- and when you run a risk and
17 uncertainty analysis, I promise you you will see some kind
18 of hydraulic impact, thousandth of a foot, tenth of a year
19 change in flood protection. He added the word
20 "significant," which was an important change and we were
21 happy to get that.

22 But overall the guidance, you know, fundamentally
23 is not going to change or make the 408 process any easier
24 than it is now. Although I was thinking today, I mean
25 we're very close to apparently getting a decision out of

1 Three Rivers, which means the Corps has gotten through
2 NEPA in a year and a half, which is not too bad. I mean
3 that's -- anybody would be pleased to say they got through
4 NEPA in a year and a half.

5 BOARD MEMBER RIE: That is pretty amazing.

6 VICE-PRESIDENT HODGKINS: Yeah. So we'll see.

7 I guess the other thing for me, I went on the
8 Meisner tour as well. I highly recommend it because it's
9 a different perspective. And you get a better
10 understanding kind of the importance of the Butte sink and
11 Butte overflow, and a different view on this Board. And
12 it's very worth listening to. Very, very bright man. I
13 hope he's able to continue the tours.

14 The last thing, in Lower Bypass Forum, we're up
15 to now five meetings. The last meeting was focused mostly
16 on understanding the nature of what it is that people
17 would like to implement in the bypass and whether the
18 bypass is the right place for this particular kind of
19 habitat creation.

20 And I'm not sure we reached any conclusion. But
21 in any case, at least things are beginning to sort of come
22 out on the table. And it is mostly tidal habitat for
23 fish.

24 I guess the other thing I ought to mention, there
25 was a presentation at Fish and Game's headquarters over in

1 the Eagle Basin wetlands. And it was on mercury. And
2 there has been some great work done over the last couple
3 of years by USGS and other academic agencies to understand
4 the process that results in the formation of methyl
5 mercury, because it's the methyl mercury that's a problem.
6 And I think their proceedings are going to be available.
7 And I probably shouldn't attempt to give you the
8 three-minute summary, but I will anyway.

9 The worst formation of methyl mercury comes from
10 cyclical wetland, where there's a wetting and a drying.
11 Apparently the drying causes some change in the mercury.
12 And the ground, that tends to make it more bio-available.
13 And so then when the area's wetted again and the
14 biological process takes place, it produces more methyl
15 mercury. If the area is continuously inundated, it does
16 not produce as much methyl mercury. And then areas that
17 are only occasionally inundated, floodplains that are
18 grasslands, are not huge producers of methyl mercury. And
19 the work was done to give Dave Feliz some guidance in how
20 he should manage Fish and Game's area out there to
21 minimize the production of methyl mercury. Because if
22 you're going to do any fish habitat at the bottom of the
23 bypass, you'd like to be sure you're not producing methyl
24 mercury further up the bypass that might affect those
25 fish.

1 So all very interesting stuff.

2 SECRETARY DOHERTY: Just one more minute.

3 I went to a session on -- at the museum in Yolo
4 County at Woodland. And we had a speaker from Downey
5 Brand who spoke, no charge. And the man that spoke on
6 monitoring of the wealth in Yolo County. And David
7 Stirling, who spoke on "Green Gone Wild." And if you
8 haven't read this book -- it's a small book. But it's
9 "Green Gone Wild." And it's all about why it's costing us
10 so much money to do anything. So I would suggest if you
11 have a chance to get the book and read it. It really is
12 very good.

13 BOARD MEMBER BROWN: You mean like \$500,000 for a
14 2D model?

15 SECRETARY DOHERTY: Yeah. But I don't really
16 think that's the price. We're going to find out. Jay's
17 going to report to us at the next session. And in the
18 meantime, Monday morning I'm going to get on the phone
19 early too to the Army Corps. We'll find out.

20 BOARD MEMBER RIE: I think the point is that you
21 have to spend that much money to cut down some trees --

22 SECRETARY DOHERTY: Yeah. And --

23 BOARD MEMBER RIE: -- whatever the amount of
24 money is, even if it's a hundred thousand.

25 SECRETARY DOHERTY: Yeah. Well, he told me the

1 laws have changed. That's what Mr. Foerster said to me.

2 PRESIDENT CARTER: Let's see. I had three
3 things.

4 One, Ginny has been working diligently along with
5 Butch and myself and Jay on the DWR Flood Protection Board
6 MOA. As you recall, the Board authorized me to sign the
7 MOA as we amended it last month. DWR didn't accept that
8 language. And we have kind of reached a compromise but
9 still not -- it's significantly different enough that I
10 didn't want to go ahead and sign it. But it has to do
11 with the real estate delegation, that paragraph 11 on page
12 8 of the MOA. And if you recall, the language was we
13 delegate -- our language was we delegate unless the
14 Board -- unless the Board determines otherwise
15 essentially. And DWR had a different spin on it. They
16 used some language in their own delegations that --
17 essentially where we are now is we delegate except those
18 which in the judgment of the Board or DWR require the
19 attention of the Board for policy or other purposes.

20 So we think that that language satisfies the
21 intent of the Board. We're still trying to confirm
22 whether or not DWR is going to accept that. And we're
23 awaiting the Director's signature on that. If we get it,
24 we'll bring it back to the Board in December.

25 So that's the status on that.

1 BOARD MEMBER RIE: Do you know why they're
2 concerned about that language?

3 PRESIDENT CARTER: No, Other than it's not the
4 way they do things. It's surprising to all of us because
5 it's the Board's authority to delegate or not. And so
6 it's very surprising to us that they would take exception
7 to the fact that the Board might want to rescind a
8 delegation for a particular -- whatever purpose the Board
9 would like.

10 BOARD MEMBER BROWN: Same requirement.

11 PRESIDENT CARTER: I think what this language, if
12 we can -- if they will agree to it, it accomplish both of
13 our purposes, and so I think we're close.

14 National Committee on Levee Safety. There was a
15 review team meeting on November -- or in October. I was
16 not able to attend. But they subsequently asked for
17 feedback on the scoping of the Committee from the review
18 team members. We sent our comments back over the weekend,
19 this last weekend. And there's a review team committee
20 meeting in Virginia December 12th, which I'm going to
21 attend. So things are moving fairly quickly there. I
22 asked Jay and Dan to review the scoping of the project and
23 they gave me comments, and I incorporated theirs with mine
24 and shipped them back to the Corps in Washington. And they
25 will compile those and feed that back to the Committee.

1 The Committee's meeting -- the regular
2 committee's meeting weekly at different locations around
3 the country.

4 BOARD MEMBER RIE: Wow.

5 PRESIDENT CARTER: Yeah. So I don't know how
6 many of those, Rod or others from California are
7 attending, but it's a fairly intensive effort and they're
8 making quite a bit of progress.

9 BOARD MEMBER RIE: Do you have a list of all the
10 people nationally who are on the Committee, either the
11 Committee or the review team?

12 PRESIDENT CARTER: I have a list of the people
13 that are on the Committee and I have a list of the names
14 of the organizations that are on the review team. And the
15 list of the Committee members, I'll ask Jay to send that
16 out to everyone. There aren't names associated with the
17 people on the review committee, just the associations. So
18 we're listed as Central Valley Flood Protection Board.
19 But the list on the review committee is a cast of, I don't
20 know, 35 or 40. And then there are -- there's a
21 relatively short list of about 18 to 20 I think on the
22 actual Committee.

23 BOARD MEMBER RIE: I was just curious what kind
24 of representation California had.

25 EXECUTIVE OFFICER PUNIA: A good representation.

1 I know four or five people who are on the Committee. Rod
2 Mayer, Ray Hart, Les Harder, and Professor Ray Seed. It's
3 a pretty good representation from the State of California.

4 BOARD MEMBER RIE: That's the actual Committee?

5 EXECUTIVE OFFICER PUNIA: On the Committee.

6 BOARD MEMBER RIE: So Ray Seed, Les Harder --

7 EXECUTIVE OFFICER PUNIA: -- Ray Hog, Rod Mayer.

8 BOARD MEMBER RIE: -- Rod Mayer.

9 EXECUTIVE OFFICER PUNIA: And there may be other
10 ones too.

11 BOARD MEMBER RIE: Okay.

12 PRESIDENT CARTER: California's fairly well
13 represented.

14 BOARD MEMBER RIE: That's good news.

15 PRESIDENT CARTER: Yeah. Well, they specifically
16 in the framework in the scoping mentioned -- in fact, Les
17 Harder is a -- they have four different teams that are
18 working on different aspects. Is it four or five? Four
19 or five different teams that are working on different
20 aspects of the project. And Les Harder is a leader in one
21 of those. He's a leader of the technical team. And they
22 specifically talk about the work that that California is
23 doing. And it appears that the Corps and the rest of the
24 nation is looking to California to help guide some of the
25 efforts.

1 BOARD MEMBER RIE: Well, that's great.

2 PRESIDENT CARTER: Finally, levee roundtable. We
3 are currently trying to finalize the framework. There are
4 some concerns between DWR and the Corps with regard to how
5 the framework is going to be used, how the framework fits
6 in with some Corps guidance that's supposed to come out in
7 January that some feel is going to conflict with the
8 framework that the roundtable has pulled together. So my
9 role has been to try and bring the parties together and
10 get a meeting of the minds. And primarily at this point
11 we're trying to get the Corps and DWR to essentially agree
12 on the framework, the language. And the Corps feels that
13 in the latest draft some of the deadlines that were
14 committed to in the middle of the summer by DWR verbally
15 between Steve Stockton and Dave Gutierrez, those deadlines
16 have been softened -- the language on those dates have
17 been softened in the latest draft, and the Corps is
18 concerned about that.

19 There have been discussions. And so it's a
20 question of really trying to get the parties to agree that
21 this is what the state can commit to and this is what the
22 Corps can live with. So that's been my role on that. And
23 there will be another meeting in -- is it scheduled for
24 January?

25 EXECUTIVE OFFICER PUNIA: Yes, the next meeting

1 is in January.

2 PRESIDENT CARTER: So that's the end of my
3 report.

4 EXECUTIVE OFFICER PUNIA: I think the next is
5 mine. I have a few items to share. I'm going to be real
6 brief. But if you need a detail, stop me.

7 Before starting I want to acknowledge the
8 services of a passed staff assistant to the Board, Pauline
9 Amaro. Last name's spelled as A-m-a-r-o. She passed away
10 last week. She was a really committed and dedicated State
11 worker and provided excellent service to the Board under
12 Ray Barsch as Executive Officer and then Pete Rabbon as
13 Executive Officer. I just wanted to acknowledge her
14 services to the Board and to the State of California.

15 I was planning to visit my parents during the
16 Christmas time. But my father's health has deteriorated
17 and my mom is saying that it may be too late. So I'm
18 planning to leave tomorrow and be absent for a couple of
19 weeks. I will be back on the 12th of December.

20 And Gary Hester will be acting during my absence
21 from the office.

22 Sutter Bypass, we discussed the resolution. In
23 addition to the resolution, based upon the Board's
24 direction, we have provided comments on the National
25 Wildlife Refuge Conversation Plan. And the copies were

1 included in your package. And we have started discussion
2 with DWR to pinpoint what's the design capacity for the
3 Sutter Bypass. We couldn't reach a consensus that whether
4 it's an O&M manual or it's the 1957 profile is the
5 governing document. We are planning to meet with the
6 Corps. The basic goal is to reach a consensus that
7 whether it's 170,000 or 155,000. So we'll continue to
8 work on that.

9 On Section 408, I just want to commend the
10 leadership and the guidance from the Board and the efforts
11 of Board Vice-President Butch Hodgkins and Teri, that as a
12 result of establishing the task force and working on the
13 task force, we are able to influence the national policy.
14 Although there may be -- still it's an uphill battle to
15 get the 408 approval, but I think as a result of the task
16 force and input from both the Board members and from DWR
17 and others, we are able to make a difference in the policy
18 guidance issued by the U.S. Army Corps of Engineers.

19 On the framework document, as Ben mentioned,
20 there's a difference of opinion between the DWR and the
21 Corps. Our role is to bring them together so that -- and
22 this framework document is again going to go on the
23 national policy by the Corps. Once this document is
24 completed, then the Corps is going to issue the vegetation
25 policy for the whole country.

1 Map of the Sacramento/San Joaquin Drainage
2 District. With Lorraine's consistent efforts, finally the
3 map is on the web. Lorraine is going to send you the
4 instructions next week. Please visit. It's a good map
5 showing the boundaries of the Sacramento/San Joaquin
6 Drainage in response to Assembly Bill 162.

7 Based upon our request, on the Bear Creek and
8 Calaveras River, the U.S. Army Corps of Engineers
9 headquarters has granted the extension through December
10 15th. We have to show the progress. Otherwise Corps can
11 still declare that they may take away the PL 84-99
12 authorization for the Bear Creek and Calaveras. But in
13 the meantime, the county has signed the PAL agreement. So
14 at least the local community has extended that they don't
15 have to buy the flood insurance, but still they can lose
16 the PL 84-99 eligibility.

17 Gary, do you have anything else to add on this?

18 CHIEF ENGINEER HESTER: Just that we're still
19 working through some issues with the Corps of Engineers on
20 the survey for Bear Creek in particular. And they're just
21 starting now -- SJAFCA is just starting the survey on the
22 Calaveras properties. So there are some additional issues
23 related to retaining walls. We were originally going to
24 bring some permits forward on Bear Creek next month. But
25 we may have to send out some additional notices to the

1 property owners for some additional items that need to be
2 removed. So we want to make sure that we are complete in
3 our communication with the property owners.

4 EXECUTIVE OFFICER PUNIA: And I will acknowledge
5 that progress has been slow. It's a little complex
6 subject. But we are making gradual progress to resolve
7 this issue. It's a complex issue due to the easement
8 rights and other issues associated with this.

9 Hiring process. We have completed the paperwork
10 to advertise two senior engineer positions, but they
11 haven't been yet advertised. We are working with the
12 Personnel. Lorraine and I will continue to complete the
13 paperwork so that we can advertise these positions as soon
14 as possible.

15 Board member salaries. You already got the
16 update.

17 We have implemented -- based upon our meeting
18 with the Colonel, one requirement was to give them a
19 two-month advanced notice which permits we will be
20 bringing to the Board so that they can prioritize their
21 work. So John Yego has implemented a process where he's
22 sending advanced notice to the Corps so that they have
23 plenty of time to review and provide us the letters.

24 BOARD MEMBER RIE: Jay, are you sending -- the
25 permits that you're thinking maybe staff would recommend a

1 denial, are you going to go ahead and forward those to the
2 Corps?

3 EXECUTIVE OFFICER PUNIA: Let's see. Gary may be
4 more appropriate to answer this question.

5 CHIEF ENGINEER HESTER: I don't think we've
6 completely decided even at the staff level what makes
7 sense, because there are some situations, as we saw with
8 Mr. Murphy's fence where I know you had asked the question
9 whether the Corps had seen the permit application. The
10 guidance we got from the Corps was they really do not want
11 to be reviewing applications that Board staff doesn't
12 support.

13 So I think we probably need to have some
14 additional discussion to make sure we're on the same page
15 with the Board in terms of that.

16 BOARD MEMBER RIE: Well, considering that there's
17 a possibility the Board may approve an encroachment permit
18 that the staff is recommending denial, it would seem
19 prudent to send it to the Corps with the caveat that, you
20 know, anything can happen.

21 CHIEF ENGINEER HESTER: We have tried to
22 accommodate their requests to basically say "no" more
23 often.

24 SECRETARY DOHERTY: To do what?

25 CHIEF ENGINEER HESTER: To basically say "no"

1 more often to applications for encroachments. That was a
2 pretty strong message that came through in the meeting we
3 had with Colonel Chapman that President Carter and Jay
4 attended.

5 PRESIDENT CARTER: I think that given the
6 situation with the permit backlog and whatnot, they're
7 going to recoil if staff forwards them a permit that staff
8 is recommending disapproval. So I think that the work
9 that we need to do is to have staff try and get in sync
10 with the Board or at least try and figure out whether
11 there are permits that are no-brainers and the Board is
12 going to deny or there are some questions. And then
13 forward those.

14 But they're so backed up that they are going to
15 go in and recoil if we send them -- if staff sends them a
16 permit that staff recommends denial on, even though the
17 Board may approve it. So, I think we need to do some
18 work -- before we do that, we need to do some work on our
19 end with staff trying to get in sync with the Board on
20 some of these issues.

21 BOARD MEMBER RIE: Well, perhaps we can have a
22 permit review committee that can be publicly noticed. I
23 think where you have a permit that's clearly in violation
24 of Title 23, I would say, you know, you probably don't
25 need to send those over. But where you have a situation

1 where a fence is allowed under Title 23 and, you know, it
2 could go either way, it's probably safe to send those to
3 the Corps. But perhaps a subcommittee could look at that

4 PRESIDENT CARTER: Um-hmm. We can consider that.
5 That's one way to get it in sync.

6 EXECUTIVE OFFICER PUNIA: And I just want to
7 clarify one thing. When we get the permit, we right away
8 send the copy to the U.S. Army Corps of Engineers.
9 Then -- because there's such a big backlog, then they have
10 asked us -- because they won't be able to review all the
11 permits. So we give them a priority and a two-month
12 advanced notice that which permits we think are the top
13 priority so that they can prioritize their work
14 accordingly.

15 Status of Mr. Murphy's permit. Based upon last
16 month's discussion, John Yego has met with Mr. Murphy.
17 But we are not in a position to bring it -- we were not in
18 a position to bring it this month.

19 John, we will be able to bring it in December?

20 FLOODWAY PROTECTION SECTION CHIEF YEGO: Mr.
21 Murphy and myself agreed that once we received a copy of
22 the easements, that we would communicate with each other
23 and probably try to meet again also. So, no, we haven't
24 scheduled it for the December meeting as of yet.

25 EXECUTIVE OFFICER PUNIA: Okay. General --

1 BOARD MEMBER RIE: One more thing on that.

2 If there's any possibility that there's going to
3 be a compromise reached and staff is going to recommend
4 approval of something, I would encourage you to send that
5 to the Corps.

6 PRESIDENT CARTER: Although they need to know
7 what the compromise is before they send it to the Corps.

8 BOARD MEMBER RIE: Yeah. Well, I'm sure he'll
9 figure it out. But that one was -- you know, it could
10 have gone either way.

11 SECRETARY DOHERTY: If you've ever been in a
12 flood fight or a fire fight, I would go right through that
13 gate. That's what they do in the country.

14 (Laughter.)

15 BOARD MEMBER RIE: Just knock it over.

16 SECRETARY DOHERTY: That's right.

17 EXECUTIVE OFFICER PUNIA: General McMahon from
18 U.S. Army Corps of Engineers, South Pacific Division, has
19 coordinated with Board President Ben Carter for a trip to
20 the JOC during December. So we'll coordinate that trip,
21 his visit, and give him a tour of the JOC.

22 PRESIDENT CARTER: I forget to mention that as
23 part of my report. He contacted me to -- he has hired an
24 individual to work with specifically on some issues with
25 the California flood issues. And he wanted to bring that

1 individual by and introduce him to the Board and have the
2 Board staff and myself talk about the mission of the Board
3 and what the Central Valley Flood Protection Board does.
4 And I was --

5 SECRETARY DOHERTY: Who is he?

6 PRESIDENT CARTER: General McMahon.

7 SECRETARY DOHERTY: Okay. I just didn't know.

8 PRESIDENT CARTER: And so that meeting is
9 scheduled for December -- what is it the 17th? Anyway,
10 it's mid-December. And Butch and myself and the Board
11 staff will have a meeting with him at the JOC. And I
12 offered to give them both a tour of the JOC and also the
13 Joint --

14 EXECUTIVE OFFICER PUNIA: -- Project Operation
15 Center for the Central Valley Project and the State Water
16 Project.

17 PRESIDENT CARTER: And they jumped at that
18 opportunity.

19 EXECUTIVE OFFICER PUNIA: It's on the 18th from 1
20 to 3.

21 And the Board President asked me to provide a
22 quick update on the permits -- status of the permits.

23 It's included in your package, a summary sheet
24 and a detailed. The bottom line is we are not making any
25 headway in clearing the permits. So there's a bottleneck

1 at the Corps. We are still awaiting Corps's letters for
2 about 34 permits.

3 But the good news is Corps has added another
4 staff person to work on -- under Jim Sandner's shop. And
5 hopefully that will help in processing at the Corps level.

6 I think that's my report. And I'll be glad to
7 answer any questions on any of these topics I just
8 covered.

9 Thank you.

10 PRESIDENT CARTER: Any questions for Jay?

11 Future agenda.

12 There was a draft that was in the handout
13 provided today under item -- is it 20? -- 20.

14 A minor change on that, 7K and L. I think --
15 John Yego informed me that the K and L won't be included
16 on the next month's agenda.

17 PRESIDENT CARTER: Okay. So we have a long
18 consent calendar. No hearings scheduled as of right now.
19 We have the MOU on there.

20 Were we going to hear about West Sacramento?
21 Yeah, West Sacramento Project, which was postponed from
22 today. The 103 request from Yuba County. And I doubt we
23 will have the framework -- I'm sure we won't have the
24 framework for December. So that will come off, Item 13.

25 We'll have our flood season preparations and

1 status of the flood control projects in the Central
2 Valley. That normally is done in November. At the
3 request of DWR we postponed it to December. Hopefully
4 we'll get back on schedule in 2009.

5 Let's see. And then we have the map preparation.
6 We should also have Steve Bradley with the --

7 EXECUTIVE OFFICER PUNIA: There's an action item
8 request of that, No. 9.

9 PRESIDENT CARTER: Okay. So anybody have
10 anything to add?

11 SECRETARY DOHERTY: Well, Gary will find out how
12 much a 2D model will cost for the bypass, right? Because
13 you're going to be gone. So --

14 PRESIDENT CARTER: Yeah, that may take some time.

15 CHIEF ENGINEER HESTER: It might take some time.
16 But I think we can give you a reasonable range,
17 particularly if we make the assumption that the lidar
18 topography is available for the modeling effort. That
19 cuts the costs down.

20 SECRETARY DOHERTY: Sure.

21 BOARD MEMBER BROWN: Or just a two-minute update
22 on what's happening with it, that would be fine.

23 PRESIDENT CARTER: Great.

24 LEGAL COUNSEL CAHILL: Is there a Cache Creek --
25 go on.

1 SUPERVISING ENGINEER FUA: Ricardo's scheduled
2 for the mapping. Should we include it here?

3 EXECUTIVE OFFICER PUNIA: Yes.

4 PRESIDENT CARTER: It is included there. I think
5 it's on item 16? Or, no, I'm sorry, it's not.

6 SUPERVISING ENGINEER FUA: It should be an action
7 item because it's for adoption by the Board, the schedule.

8 PRESIDENT CARTER: And then we should -- it's the
9 schedule that we have to adopt, correct?

10 EXECUTIVE OFFICER PUNIA: That's correct.

11 SUPERVISING ENGINEER FUA: Yes.

12 LEGAL COUNSEL CAHILL: That's 9.

13 EXECUTIVE OFFICER PUNIA: Yeah, Dan is correct.
14 We need to add another item from Ricardo's shop.

15 PRESIDENT CARTER: Well, actually 9 is the
16 schedule for implementation of the Flood Control System
17 Status Report.

18 EXECUTIVE OFFICER PUNIA: That's Steve Bradley's
19 shop. I think there is an additional schedule that the
20 Board needs to adopt from Ricardo's shop.

21 PRESIDENT CARTER: Okay.

22 LEGAL COUNSEL CAHILL: And is Cache Creek coming
23 in December or not until January?

24 STAFF ANALYST PENDLEBURY: Not until January. I
25 got an Email to please postpone it.

1 PRESIDENT CARTER: Okay. Anything else to add?

2 It's going to be a big meeting in December.

3 SECRETARY DOHERTY: Which meetings aren't big?

4 (Laughter.)

5 BOARD MEMBER RIE: Are we going to attend the --

6 I don't know if it's the same day -- but the Sacramento

7 Yard Luncheon.

8 MR. KOCH: Yeah, the Sac Yard is on the 18th.

9 PRESIDENT CARTER: That's Eric Koch.

10 EXECUTIVE OFFICER PUNIA: We'll share that

11 information about the DFM luncheon and the yard luncheon.

12 Then Board members can decide accordingly.

13 BOARD MEMBER BROWN: You will Email that?

14 EXECUTIVE OFFICER PUNIA: Yes.

15 PRESIDENT CARTER: Anything else?

16 All right. Ladies and gentlemen -- no comments

17 from the staff?

18 We're adjourned. Thank you.

19 (Thereupon the Central Valley Flood

20 Protection Board meeting adjourned

21 at 5:45 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Central Valley Flood Protection Board meeting
7 was reported in shorthand by me, James F. Peters, a
8 Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 5th day of December, 2008.

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22 JAMES F. PETERS, CSR, RPR

23 Certified Shorthand Reporter

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